

# INDIAN RESERVATION ROADS AND THE TRANSPORTATION EQUITY ACT OF THE TWENTY-FIRST CENTURY

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## HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING TO RECEIVE TESTIMONY ON THE INDIAN RESERVATION ROADS PROGRAM AND THE IMPLEMENTATION OF THE TRANSPORTATION EQUITY ACT FOR THE TWENTY-FIRST CENTURY

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WASHINGTON, DC



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# **INDIAN RESERVATION ROADS AND THE TRANSPORTATION EQUITY ACT OF THE TWENTY-FIRST CENTURY [TEA-21]**

**WEDNESDAY, OCTOBER 20, 1999**

**U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
Washington, DC.**

The committee met, pursuant to notice, at 9:30 a.m. in room 485, Russell Senate Building. Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, and Wellstone.

## **STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS**

The CHAIRMAN. Good morning. The Committee on Indian Affairs will come to order.

Today we will receive testimony on the Indian Reservation Roads Program and the implementation of the Transportation Equity Act for the 21st Century, known as TEA-21. Physical infrastructure is necessary for Indian tribes and their citizens to carryout everyday activities like law enforcement, medical services and transporting people and goods across Indian lands. In addition, for tribes to be viable and to develop healthy economies, they must have the ability to attract and retain job-creating activities. To be competitive, tribes must have the basic infrastructure.

As we will hear today, most Indian communities lack the infrastructure that other communities take for granted. Like many other issues, the ability to build infrastructure is dependent on funding. Many members of this committee, notably Senator Domenici, have worked very hard to make sure Indian tribes receive their fair share of the Federal funds which now is to \$275 million, earmarked for tribes under TEA-21.

Building on these efforts, in 1998, Senator Inouye and I proposed amendments to the TEA-21 Act to authorize tribes to contract out for road construction pursuant to the Indian Self-Determination and Education Assistance Act, and two, to require negotiated rule-making with the tribes to make the transition a smooth one.

As we will hear today, there were several bumps in the road, so to speak, as tribes assume a greater role in road and bridge construction. Evidently, one of the major obstacles facing tribes seems to be the Bureau of Indian Affairs itself. I am hopeful that we can

shine light on these problems and cooperatively work through them. But make no mistake, we are committed to making sure that TEA-21 works for the tribes, and we will propose changes to the Act if necessary.

With that, until Senator Inouye gets here, we will go ahead and start with the testimony of the first panel, which will be Arthur Hamilton, Program Manager, Federal Lands Highway Program, Department of Transportation; Robert Baracker, the Director of the Southwest Regional Office for the Department of the Interior, who will be accompanied by LeRoy Gishi, the Chief of the Division of Transportation.

If you gentlemen would like to start, your complete written testimony will be included in the record. If you would like to abbreviate, you are welcome to do so.

**STATEMENT OF ARTHUR E. HAMILTON, PROGRAM MANAGER,  
FEDERAL LANDS HIGHWAY, DEPARTMENT OF TRANSPORTATION**

Mr. HAMILTON. Mr. Chairman and members of the committee, thank you for the opportunity to testify today on the Department of Transportation's implementation of TEA-21, provisions affecting the Indian road program. I would like to introduce myself first.

My name is Arthur Hamilton, and I am the Program Manager for the Federal Lands Highway Program, of the Federal Highway Administration. The Federal Lands Highway Program provides funding for the coordinated program of public roads and transportation facilities serving Federal and Indian lands, and includes the Indian Reservation Roads Program.

TEA-21 reaffirmed the Federal Government's commitment to provide safe and efficient access to and within Indian lands and Alaska Native villages by authorizing \$1.6 billion in funding for the IRR program for fiscal year 1998 to 2003. TEA-21 also strengthened the commitment of the Federal Government to increasing the involvement of Native Americans in transportation programming and planning.

I would like to briefly report to you on some of the actions we have taken as part of our TEA-21 implementation to achieve our goal of improving transportation for Indian lands while increasing tribal involvement in the process. As part of the TEA-21 requirements to develop transportation planning procedures, the Federal Highway Administration and BIA, in consultation with tribal governments, developed the Indian Reservation Roads program, transportation planning procedure and guidelines document, which is now available as interim guidance for transportation planning effective this month.

In addition, to clarifying policies on funding and other activities, this document addresses the issues of coordination, cooperation and consultation between and among tribal governments, State DOT's, the Federal Highway Administration, the Federal Transit Administration, metropolitan planning organizations and local governments throughout the transportation planning process. It defines the roles and responsibilities of the various entities, ensuring that coordination and consultation appropriately occurs.

We have begun conducting training on these planning procedures in cooperation with the BIA and Tribal Technical Assistance Program centers, and will be offering 2-day workshops in all 12 of the BIA regions. State transportation planners will also participate in these workshops.

TEA-21 also directed the Secretary of Transportation to coordinate with the Secretary of the Interior to establish a nationwide cooperative program for improving deficient Indian reservation road bridges, using a set-aside of not less than \$13 million of IRR funds per year. After soliciting comments, on project selection and fund allocation procedures, through meetings with tribal representatives and a Federal Register notice, FHWA developed guidance for a bridge program that was published as an interim final rule in July.

We are now conducting training sessions on the bridge program, and encouraging Indian tribal governments to identify their deficient bridges, so that they can obtain funding to repair or replace them. During fiscal year 1999, we funded all of the eligible 11 deficient bridge projects that were submitted to us, using about \$8.9 million of the IRR bridge funds.

TEA-21 required development of a funding formula using negotiated rulemaking with Indian tribal governments. The Federal Highway Administration is cooperating with the Department of the Interior and the tribes to develop this new funding formula. We remain fully committed to providing the necessary staff and IRR funding to complete this rulemaking.

I would like to highlight one specific example of the Department's progress in carrying out Congress' directives in TEA-21. The Walden Point Road construction project for the Metlakatla Indian Community of Alaska illustrates the diversity of Indian Reservation Roads program and successful program delivery through-out joint agency and tribal efforts.

This project consists of constructing 14 miles of roads and bridges to link Metlakatla with the Alaska Marine Highway system and a proposed ferry terminal. It includes relocation of power facilities in conjunction with the road construction. When completed, the project will provide economic opportunity to the Metlakatla Indian Community through the sale of power to southeast Alaska, by providing access to a major port for cruise ships, and by improving access to the rest of Alaska. Federal Highway is working in cooperation with the Department of Defense, the Metlakatla Indian Community, the Alaska Department of Transportation and BIA.

To conclude, we are working hard to implement the IRR provisions of TEA-21 as quickly and effectively as possible. We believe that implementation has gone smoothly.

However, we recognize that transportation is a critical tool for tribes to improve the quality of life in their community, and that there are still many challenges to overcome. We look forward to working with this committee to assure that remaining issues are addressed in a timely, effective and responsive manner. Mr. Chairman, this concludes my remarks, and I will be happy to answer any questions you or the committee may have.

[Prepared statement of Mr. Hamilton appears in appendix.]

The CHAIRMAN. Thank you, Mr. Hamilton.



I will have to tell you very candidly, I hear very little criticism of your agency. You must be doing better than a lot of us here in the capital.

Mr. HAMILTON. Thank you.

The CHAIRMAN. Mr. Baracker, go ahead.

**STATEMENT OF ROBERT BARACKER, DIRECTOR, SOUTHWEST REGIONAL OFFICE, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY LEROY GISHI, DIVISION CHIEF, BUREAU OF INDIAN AFFAIRS TRANSPORTATION PROGRAM**

Mr. BARACKER. Good morning, Mr. Chairman and members of the committee. My name is Robert Baracker, I am the Regional Director of the Bureau of the Indian Affairs Southwest Regional Office in Albuquerque, NM. I also serve as the designated Federal official for the TEA-21 negotiated rulemaking committee.

With me today is LeRoy Gishi, the Division Chief for the Bureau of Indian Affairs Transportation Program.

We are pleased to be here today to provide you with an overview of the status of the BIA Indian Reservation Roads program and Transportation Equity Act for the 21st century, commonly referred to as TEA-21, implementation activities. I have submitted a prepared statement and would like to summarize some of the more important points of that statement.

The CHAIRMAN. That will be fine.

Mr. BARACKER. I would like to first begin by providing an overview of the TEA-21 implementation since its enactment. TEA-21 was enacted on June 9, 1998. Following that, the TEA-21 Restoration Act enacted in July 1998 provided technical corrections to the original law. The act included an increase of \$1.6 billion for the IRR program for the fiscal years 1998 through 2003. BIA and our colleagues at the Federal Highway Administration began meeting in August 1998, on discussing the implementation of TEA-21, specifically section 1115 of the act, which requires the Secretary of the Interior to establish program procedures and a funding formula under regulatory negotiations with tribal governments.

In October 1998, I was asked by the Assistant Secretary to be the designated official for this rulemaking. In November 1998, a national information meeting on Section 1115 of TEA-21 was held in Albuquerque, NM. This informational meeting was the first outreach meeting of any public agency required by the major changes in TEA-21 legislation. In December 1998, a notice of intent to form a negotiated rulemaking committee and accept applications for membership was issued. Nominations were submitted by the tribes within BIA's 12 regions, and appointment for consideration as committee members and alternate members to the committee were made.

In February 1999, nominations submitted by the tribes and appointed by the Secretary were published in a subsequent Federal Register and requests for comments were made. The committee representation, which totals 42, 29 tribal representatives, 13 Federal representatives, consists of small, medium and large tribes.

On March 16, 1999, the first meeting of the committee was scheduled and held in Albuquerque, NM. And I need to emphasize



that in less than 8 months from the full enactment of TEA-21, the negotiated rulemaking committee was fully assembled and had its first meeting. The committee has organized itself into four work groups to accomplish the task of developing procedures and a funding formula. The work groups are specifically addressing the funding formula, technical and construction standards, policy and delivery of services for the IRR program.

The average length of negotiated rulemaking that we are familiar with has been anywhere from 22-24 months. This reg-neg committee has met every month since March. The committee has aggressively set a revised schedule to complete proposed rules by March 2000. If this March milestone for the proposed rule is met, this will allow for publishing a final rule for program procedures and formula by November 2000.

A question as a result of these new time lines is how to distribute fiscal year 2000 IRR funds. The intent is to distribute these funds in accordance with existing relative need formula. It is prudent that projects currently approved for fiscal year 2000 within tribal transportation improvement programs and the necessity to fund ongoing projects be funded in the absence of any reg-neg committee recommendation.

In our parallel efforts with Federal Highway to have greater participation of tribes and the general public, the Intertribal Transportation Association and the BIA have held five regional town hall meetings on the implementation of TEA- 21, as well as to discuss the transportation needs of tribal governments in the 21st century. Each town hall meeting produced a consensus report that represented a statement by participating tribes and local-State transportation agencies involved.

As a followup to those meetings, ITA is now working with those regions on implementation plans for these recommendations. ITA has brought together tribal and non-tribal governments in an effort to foster greater cooperation. They are to be commended for their leadership in this tribal transportation arena.

In addition to developing program procedures and a funding formula, TEA-21 also modified the IRR program to include increased annual funding from \$191 million to \$275 million annually. It established a nationwide priority program for improving IRR deficient bridges. It provides funding for transit facilities, and last, clarified and strengthened self-determination contracting opportunities for road construction.

We have worked jointly with Federal Highway and tribes in the TEA-21 effort. We are building on a partnership. The theme of our reg-neg committee has become partnership into the next millennium.

Indeed, the partnership with the Federal Highway Administration has been an evolving relationship, since the IRR program was established in 1928. The purpose of the IRR program is to provide safe and adequate transportation and public road access to and within reservations, Indian lands and communities for Native Americans, visitors, recreationists, resource users and others while contributing to economic development, self-determination and employment of Native Americans. The program is jointly administered by the BIA and the Federal Highway Administration.

As of June 1999, the IRR system consisted of 25,700 miles of BIA and tribal roads, and 25,600 miles of State, county and local government and public roads, in addition to one ferry boat operation. From the \$275 million annual authorization, Federal Highway reserves up to 1.5 percent for Federal Highway Administration costs.

The BIA Division of Transportation and the Federal lands program within the Federal Highway Administration jointly develop plans for utilization of construction funds. This plan includes operating expenses for the Federal lands highway coordinated technology implementation program, the local technical assistance program centers for tribal government, BIA program management and oversight activities, not to exceed 6 percent as authorized in annual DOI appropriation act. In addition, 2 percent of the IRR funds are set aside for transportation planning by tribal governments.

The current joint BIA and Federal Highway Administration approved formula for distributing construction funding is the relative needs allocation formula that was developed and has been in use since 1993. Design and construction of projects is performed by tribal governments, BIA, other Federal agencies, consultants, or State and local governments. In 1995, about 35 percent of the IRR construction was performed by Indian tribal governments under Public Law 93-638 contracts. Approximately 40 percent were done under Buy-Indian contract authority. Approximately 15 percent were performed using Indian labor under BIA force account procedures.

In 1998, the percentage of 638 contracts increased to 50 percent, while the work performed under the Buy-Indian Act contractors decreased to 13 percent. BIA force account laborers increased to 29 percent. The remaining projects were constructed by highway contractors selected by other methods. Whereas the construction of IRR roads is funded through highway trust funds, the maintenance of IRR roads is funded through annual DOI appropriations acts. As a condition for continuance of Federal lands funding for improvement and in accordance with 23 U.S.C., the BIA is responsible for proper maintenance of BIA roads using DOI funds to protect the public investment and provide safe transportation for tribal members and the general public.

The BIA currently receives about \$25.5 million per year for maintenance. On average, this amount is less than \$500 per mile of road. Comparable State agencies estimate the maintenance need at about \$4,000 to \$5,000 per mile. The lack of proper maintenance is becoming evident in the frequency of reconstruction activities because roads are deteriorating prematurely.

The BIA estimates that \$100 million per year is needed to adequately maintain BIA owned roads. Maintenance funds are allocated to BIA regional offices by formula, and actual maintenance activities are performed by BIA tribal government, inter-governmental cooperative agreements and by other methods.

Between 1992 and 1997, the IRR program has built, reconstructed or improved on average 200 miles of roads per year on or near Indian reservations, villages and communities. During this same time period, approximately 300 bridges have been built, replaced or rehabilitated. As much as 50 percent of these bridges

were part of cooperative agreements with State and local governments for bridges serving Indian communities.

During this same period, as much as 94 percent of the available funds authorized have been directed toward the planning, design and construction of road projects. Through 1998, 77 percent of the funds authorized for the program are directed into actual projects impacting tribal priorities. According to the Federal Lands Highway program, this percentage is the highest of any Federal land management agency participating in 23 USC roads programs.

In 1998, approximately 541 projects were in development by the BIA and tribal governments. One hundred fifty-one of these were contracted by tribal governments. In fiscal year 1999, 11 deficient IRR bridges were funded. From 1992 through 1998, approximately 170 IRR bridges have been replaced or rehabilitated. During this same period, another 131 new IRR bridges have been built with construction funds.

The construction need is the estimated cost to improve roads to an acceptable standard on uses and capacity. About two-thirds of BIA road systems are earth roads, of which 75 percent are unimproved earth roads. The remaining paved roads are reconstructed and resurfaced well in advance of their design life because of lack of maintenance.

Simply stated, we are reconstructing and resurfacing roads every 7 to 8 years, when the norm should be about 10 to 15 years. These statistics are important when one considers the existing construction need inventory, which is currently estimated at \$6.6 billion.

In closing, the IRR program will need to become a true multimodal program to address all the needs of Indian country. Mr. Chairman, we will provide responses to the committee questions I received yesterday. Thank you, and we will be happy to answer any questions you may have at this time.

[Prepared statement of Mr. Baracker appears in appendix.]

The CHAIRMAN. Thank you. Well, you gave me so many numbers and statistics and figures and percentages, frankly, it is going to take me a while to digest what all that means. But thanks for your testimony.

Just from the outset, it sounds to me like the money under TEA-21 that was supposed to go to roads because of the deteriorating existing roads, little of it is going for new roads, is that right? Most of it is going to try to repave existing deteriorating roads?

Mr. BARACKER. That is correct, sir.

Mr. HAMILTON. Yes.

The CHAIRMAN. I did send a list of questions to Assistant Secretary Gover the other day. These are the questions you were referring to, you said you just got them yesterday?

Mr. BARACKER. Yes, Mr. Chairman.

The CHAIRMAN. All right, if you could respond to those at your earliest convenience, I would appreciate it.

Let me ask you two or three things. Your testimony really paints a pretty nice picture of what you are doing. But that is frankly not what we are hearing from tribes, and I am sure some of them are going to testify from a little different perspective after this committee is done. But it looks like the funding is somewhat being chipped

away by what is called obligation limitation, and the siphoning of funds from the Indian bridges program.

Is the Department proposing any statutory changes to make this better?

Mr. BARACKER. I am not aware of any at this point, Mr. Chairman.

The CHAIRMAN. Governor Thomas of Gila River reports that the Phoenix area roads engineer is deciding when and where to allocate the Indian roads funds, and that despite the continuing need for road funds, the Phoenix Area Office returned \$12 million to the BIA headquarters in Washington. Would you like to comment on that, and tell me why that happened?

Mr. BARACKER. I am not familiar with that instance, but with me is Mr. LeRoy Gishi, and perhaps he can shed some light on that.

The CHAIRMAN. Mr. Gishi.

Mr. GISHI. Yes, Mr. Chairman; I am familiar with that. The funds that you are referring to have been returned. As you are aware, in 1998 when TEA-21 was passed in June, the amount of available funding was an increase over ISTEA. The amount of time to obligate these funds was 3 months. Projects were not ready to obligate funds before the end of the year.

One of the tremendous impacts for the program has been under TEA-21, a provision called "point of obligation." But at that time, it was not available to us to be able to implement without the risk of losing funds. The result is that a number of the regions, in the amount of \$18.6 million, requested to reserved these funds at Federal Highways, for the purpose that they be redistributed to those regions in the following year.

The CHAIRMAN. You are telling the committee that the \$12 million that was returned will be redistributed?

Mr. GISHI. Absolutely.

The CHAIRMAN. To the tribes?

Mr. GISHI. It was, yes.

The CHAIRMAN. It was already?

Mr. GISHI. Yes; it was.

The CHAIRMAN. Maybe also, it is my understanding that Mr. Hamilton's agency gets 1 percent of the funds for administration, the Bureau gets 6 percent of the funds, which is the floor. They can keep more, apparently, for administration. Would you like to comment on that discrepancy? Do you do more work than them or what?

Mr. BARACKER. Mr. Chairman, the 6 percent is the ceiling.

The CHAIRMAN. It is not the floor, it is the ceiling?

Mr. BARACKER. Yes; the Bureau receives up to 6 percent for program management and oversight responsibilities.

The CHAIRMAN. Okay, thank you.

And if you are not in a real big rush, Mr. Baracker, I would like you to stay to hear testimony from the tribal representatives.

Mr. BARACKER. I would be very happy to, Mr. Chairman.

The CHAIRMAN. Mr. Hamilton, I also have a couple of questions for you. Maybe we have a difference of how we read TEA-21, but is it your understanding that funds shall be made available, or that all funds shall be made available for tribal contracting?

Mr. HAMILTON. The way I see it, Senator, is that funds should be made available. That is what we have been using.

The CHAIRMAN. Well, the way I read the bill, it says, all funds should be made available. You might want to review that.

But I would like to ask you, is your agency conducting any audits at all on BIA administered road program?

Mr. HAMILTON. Yes; we do process reviews of the BIA region.

The CHAIRMAN. What are the results so far of that review?

Mr. HAMILTON. We have some that is ongoing now. I think for that fiscal year 1999, we still have some reports that have not been submitted yet. So I do not have that information today.

The CHAIRMAN. Would you make available to the committee the results when you finish those audits?

Mr. HAMILTON. Yes, sir; I sure can.

The CHAIRMAN. From your testimony, it appears that your agency is prepared to assist tribes with technical assistance, and has succeeded as a lead agency in at least one key project with a tribe in Alaska. Is that correct?

Mr. HAMILTON. Yes.

The CHAIRMAN. Well, then the question would be, is your agency willing to take on direct tribal contracts to implement road programs as you did in Alaska?

Mr. HAMILTON. In Alaska, we did not take on direct contracts. What we did is that BIA provided the funds for us to provide a bridge design service for this project. And then the military came in to provide the roadway, part of the roadway construction. So we have not done direct contracting with the tribes.

The CHAIRMAN. That was a one-time deal?

Mr. HAMILTON. No; we are available, if BIA wants us to provide design services. We are willing to do that.

The CHAIRMAN. You have the capabilities and you are willing to do that?

Mr. HAMILTON. Yes; we do.

The CHAIRMAN. Thank you.

The Indian Reservation Roads program was established in 1928. And this partnership between your two agencies began in 1930, as I understand it. I would hope that the interaction you have between your agencies, frankly, is going to do a better job in trying to get more roads and rebuild some of the existing ones. Because I know, I spend a lot of time on reservations, and many of those roads, frankly, are almost useless, particularly if the weather goes down. So I might mention that to you.

Mr. HAMILTON. Yes, sir.

The CHAIRMAN. With that, I thank you both. Any further testimony will be included in the record, if you can get those answers to those questions, Mr. Baracker. And Senator Inouye had to go to another committee, but he may have some questions that he will submit in writing, too.

Mr. BARACKER. Yes, sir.

The CHAIRMAN. We will now go to the second panel, and that will be Mary Thomas, Governor of the Gila River Indian Community, from Sacaton, AZ; Loretta Bullard, president of the Kawerak Corporation of Nome, AK; Bobby Whitefeather, chairman of the Red



Lake Band of Chippewa Indians; and Paulson Chaco, the director of the Navajo Nation Department of Transportation.

Ms. Bullard, did I meet you with I was up in Nome with Senator Stevens?

Ms. BULLARD. Actually, I saw you, but we were not introduced.

The CHAIRMAN. It was 47 below. I remember that very specifically. [Laughter.]

Welcome down here.

We will start in that order. Governor Thomas.

**STATEMENT OF MARY V. THOMAS, GOVERNOR, GILA RIVER INDIAN COMMUNITY, ACCOMPANIED BY SANDRA SHADE, DIRECTOR, DEPARTMENT OF TRANSPORTATION, AND GARY BOHNEE, EXECUTIVE STAFF**

Ms. THOMAS. Good morning, Mr. Chairman and distinguished members of the Senate Committee on Indian Affairs. At this time, I will restrict myself to a shorter oral testimony, but ask that my complete testimony be placed in the record.

I would also like to introduce Ms. Sandra Shade, who is the director of our Department of Transportation for Gila River, and also Gary Bohnee, who is a member of the executive staff of Gila River.

My name is Mary Thomas. I am currently completing my second term as the Governor of the Gila River Indian Community. The Gila River Indian Community is comprised of both Akimel O'Otham and Pee-Posh Nations. Our reservation was created by Executive order in 1859 and covers 372,000 acres in south central Arizona.

Our community is comprised of approximately 20,000 members, enrolled members, 13,000 of whom live on the reservation. We are recognized as the fourth largest Indian populated reservation in the country.

Our community is in a period of dramatic change. Over the last 5 years, our reservation population has grown by nearly 44 percent. Not only is our reservation growing, but it is also getting younger. These days, those members who reside on the reservation, over 51 percent are under the age of 21. As the northern boundary of our reservation forms the southern boundary of the Phoenix metropolitan area, our community has experienced tremendous growth that mirrors that of Phoenix, one of the largest growing cities in the country.

As a result, there has been great urgency to keep pace with the growing infrastructure demands within our community. Although my written testimony addresses a number of concerns, I would like to address one of the more important issues, that of our community's experiences with the Indian Reservation Roads program, and in particular, the Bureau's Phoenix Area Office.

There are other issues that are also important to us, the obligation limitation issue, for example. But I understand that other distinguished colleagues on this panel will address this issue in a more comprehensive manner.

In our community, of the 500 plus miles of roads within our reservation, only half are paved. The remaining half are largely unimproved dirt roads, and unfortunately, we do not see this situation improving any time soon. The reason for this is that the Bureau

of Indian Affairs Phoenix Office has decided upon using its own formula calculations, as opposed to adhering to the newly mandated TEA-21 rules of relative need.

The community for several years now has continued to be concerned with the Bureau's Phoenix Area Office handling and distribution of its Indian reservation roads program moneys. Prior to the enactment of TEA-21 under the law, Intermodal Surface Transportation Efficiency Act, or ISTEA, mandated that the Bureau allocate funds based on relative need formula.

But in Phoenix, unfortunately, it has been the community's experience that contrary to this clear congressional intent, the area has applied its own arbitrary allocation formula. As a result, our community's road projects have been underfunded by approximately \$2.5 million for the period 1992-97.

In uncovering this funding shortfall, our community requested an audit by the Federal Highway Administration of the Bureau's Phoenix Area Office to determine the reasons for these funding discrepancies. The Federal Highway Administration audit revealed that the Phoenix Area Office never fully implemented the relative need formula funding as dictated by ISTEA. Rather, they have been utilizing a different fair share formula to track the annual aggregate amount of funding for each Indian tribe in the Phoenix area.

There are 42 tribes in the Phoenix Indian area. The Highway Administration report found that the Phoenix Area Office had not changed its allocation methodology since 1983. So in effect, each Indian tribe in the Phoenix area has received the same flat percentage of roads funding for the last 16 years.

It has been only in the last year that Phoenix Area Office updated its basic statistics on its population growth for each tribe. Moreover, although the Phoenix Area Office purported to allocate roads funding, pursuant to this fair share formula, on the contrary, in practice, the area roads engineer has exercised absolute discretion as to which tribal projects get built and which tribal projects do not.

In establishing his priorities, the roads engineer is able to reallocate reservation roads moneys among the many Phoenix Indian tribes regardless of the fair share formula. This practice not only resulted in our community's being underfunded by approximately \$2.5 million, but more importantly, it seriously undermines the ability of tribal governments to plan for future reservation roads needs.

In fact, we had to go to Senator McCain in order to get this audit report. And through his efforts, we did get the audit report in our hands. Given the long hours of debate and deliberation that went into crafting the formulas to allocate funds among the States and Indian tribes under ISTEA and TEA-21 in this committee and in Congress, I find it extremely disturbing that the Phoenix Area Office can continue to ignore these formulas and leave funding allocations to the unbridled discretion of its roads engineer.

When our community raised its concerns with Phoenix Area Office, the response received from the Area Office was, and I quote, "There can be no rigid allocation of construction moneys" due to the costs of roads projects. And when asked to justify their actions,



they responded, and I quote again, "Spread out over the years and averaged, all tribes are treated fairly."

The report also found other questionable areas, such as the Area Office does not provide adequate enforcement of quality assurance and quality control and road construction projects, because they do not have the staff at the construction site. Transportation planning functions are carried out in a fragmented and inefficient manner by the Phoenix Area Office due to lack of organization, staffing, and disjointed allocation of planning responsibilities.

The Phoenix Area Office fails to communicate with the Phoenix area tribal governments, which creates serious misunderstanding about the IRR program. The current Area Office certification acceptance plan is outdated and is not functioning according to the requirements of TEA-21.

The report also highlighted several problem areas within the Phoenix Area Office roads program that in our experience have resulted in the continued deterioration of reservation roads throughout the Phoenix area. The Phoenix Area Office has done little to assist tribal governments in planning for future reservation roads needs or to complete the area wide roads inventory.

In 1992, our community provided the Phoenix Area Office with a resolution that described the community's road construction priorities for the next 5 years. The next 5 years has already passed. And of that, only one has been completed.

But I want to say, the last year, the Phoenix Area Office advised the community it was returning to BIA headquarters its unallocated amount of \$12 million. We were never forewarned of this, and it caught us by surprise at the very end. This could probably happen again very soon.

So because of this whistle-blower effect in exposing some of these issues, things have not gotten any better. In fact, they have gotten worse. There is documentation in our reports of the unprofessional mannerism of the roads engineer, the disrespect for the tribes and of my staff in particular, and also to the other staffs of ITCA, and this letter will be provided to you which highlights this unprofessional conduct.

So we are very displeased at this point on how we have been treated out in the Phoenix area, and I hope that the ears are here to listen to what we are trying to report to you today. And also that we are finding it very disheartening that even though through our efforts, we provide a lot of services under contracting and also compacting and annual funding agreement negotiations, we are still depicted as people who do not know how to run programs.

So I implore you to listen to my comments, and I will provide this oral testimony also to you, because it covers a lot of areas, and I would urge Mr. Hamilton to look at compacting directly with FHA in order to cut out all this redtape.

I thank you for listening to me this morning. I will be happy to answer any questions.

[Prepared statement of Ms. Thomas appears in appendix.]

The CHAIRMAN. We thank you, Governor Thomas. We may consider some statutory changes to allow Mr. Hamilton's agency to do direct contracting.

I am sure you heard Mr. Baracker's testimony about the amount of tribal input. I was rather impressed with the numbers that he said, of the numerous meetings they have had. You are saying that your tribe has had no voice in which roads are to be built and that the Bureau engineer pretty much makes the decision? Is that basically your testimony?

Ms. THOMAS. We have had our priorities, and it was developed throughout community input which roads needed the most attention, especially roads that involved our children, transportation to school, ambulance services, fire services. And we provided that list way back in 1992. And up to 1997, only one has been built.

And so we questioned why they returned \$12 million, and also why we were short funded. And we realized this way back in 1993, I believe, and started investigating and asking for this audit. And it was very hard getting it out of their hands, so we could justify—

The CHAIRMAN. And you did not know the \$12 million was going to be returned?

Ms. THOMAS. No.

The CHAIRMAN. Did you have roads prioritized that that money could have gone to?

Ms. THOMAS. Yes; and they are still out there.

The CHAIRMAN. Mr. Baracker also testified, as I understood his testimony, that that \$12 million has been reprogrammed.

Ms. THOMAS. It is probably going to reprogram, but we are not sure, because it is not identified as such.

The CHAIRMAN. So it may not come back to you anyway?

Ms. THOMAS. So we don't know.

The CHAIRMAN. Did I understand also that there was a tribal audit on the highway? Did the tribe do that or the Federal Highways? Yes, the tribe requested the Federal Highways Administration to do an audit, apparently, is that correct?

Ms. THOMAS. Yes.

The CHAIRMAN. What was the result of that audit?

Ms. THOMAS. The audit was very skewed, because we did not get our hands on it, and they interpreted it in their own way and that is how they responded to us. So we requested this audit report and they would not give it to us. So we went to Senator McCain, and he is the one who provided us a copy. And that is when we really started studying it and found out all these discrepancies.

The CHAIRMAN. What was your opinion of it? What was the result of that audit when you finally did get a copy through Senator McCain's office?

Ms. THOMAS. That we could have been well on our way to improving the roads that needed the most attention, but they are still in the same condition today.

The CHAIRMAN. Well, I think the intent of Congress when that bill was passed is that the money should have gone there, and that the Phoenix Area Office apparently has applied a flat percentage of the funds since 1983, and that your reservation has been short-changed.

I have been down to your reservation a number of times. In fact, the last time I was down there was between Christmas and New Year's. I came out, visited around a little bit, saw some good

friends of mine, I'm sure you know the Lewis family, Myrna Lewis. It seemed to me that your tribe is doing rather well, considering the deteriorating roads, in terms of agriculture and small business and tourism, and a number of high energy activities that are going on. I wanted to commend you on that. But certainly you could do better if you had a good basic, solid progressive infrastructure, too.

You offer two options. One is to enter a self-governance compact, so that all the roads money goes to the tribes, which is basically the intent that I would like to see, and two, to make the Federal Highway Commission the lead agency for the purpose of Indian roads. Is one more effective than the other, do you think, whether it would be better to have self-governance compacts so the money would go directly to the tribes or to have the Highway Administration be a lead agency on it?

Ms. THOMAS. I think it would be better for the Federal Highway Administration to take the lead, because when it comes down to the funding levels to whichever bureaucracy, and we find this with the Bureau, that they take their share of the money before it even gets down to the tribes. This way we can get money directly, and then be responsible and be accountable.

I also want to point out that we have been very successful working with the counties and States. And as you know, interstate 10 runs, bisects our reservation for 30 miles. We had a count on that highway, there are a million cars that go through Gila River every year, not counting the county and State. So we have been very successful in working with outside agencies. But we seem to not work with our own Bureau.

The CHAIRMAN. Well, math was never my long suit, but I was just trying to figure out what 6 percent of that \$275 million was. And it comes out around \$8 million, something of that nature. The \$12 million that was returned, by the way, you did mention that you had no prior knowledge that was going to be done. Have you been given any knowledge at all that that money was going to be reprogrammed? Did you have any knowledge of it before today?

Ms. THOMAS. No; in fact, we have about \$7 million allocated for our next road projects, and we were told about a week before it was going to expire, they told us, your money is going to be returned if you don't obligate it. So we rushed and we set our paperwork in motion. When we skipped one number in there, they arbitrarily put their own number in there, and they said, this is what you signed off on. But we are going to back and address that issue and set it straight.

The CHAIRMAN. I thank you very much. And thank you for your testimony, and please tell Myrna Lewis hello for me. Her son is making a necklace for me. Remind her of that.

We will now hear from Ms. Bullard, President of Kawerak. Why don't you go ahead. Thank you for being here. You have had a long trip.

#### **STATEMENT OF LORETTA BULLARD, PRESIDENT, KAWERAK, INC.**

Ms. BULLARD. My name is Loretta Bullard, and I am President of Kawerak, Inc., which is a consortium of 20 federally-recognized

tribes in northwest Alaska. We have 16 communities with approximately 7,000 tribal members.

First off, I would like to note that the Indian Reservation Roads program is badly underfunded and that we strongly support requests made by NCAI and others that Congress fund the IRR program at 100 percent. Reservation roads constitute approximately 2.63 percent of all the roads in the Nation, where the program receives less than 1 percent of the funds. If the IRR program was fully funded at a level proportionate to existing road mileage, the IRR program would receive approximately \$793 million, which we fully support.

The existing relative need formula currently used by the Bureau of Indian Affairs to distribute IRR funds is grossly unfair and in need of change. It is illogical and it does not fairly or accurately measure tribal needs. It is contrary to the authorizing legislation for the program, and excludes the majority of eligible Indian reservations and Alaska native communities from meaningful participation.

The formula reflects a policy decision made by the Bureau that the highest and best use of IRR funds is to rebuild and rehabilitate existing BIA-owned roads. There are three factors in the existing formula. Fifty percent is allocated based on a cost to improve, 30 percent is allocated based on vehicle miles traveled, and 20 percent is allocated based on population. Both the cost to improve and vehicle miles factors are based on a roads inventory which is limited to existing roads that BIA itself owns or controls the right of way for. Tribes with no BIA roads at all are excluded from 80 percent of the funding.

And because Alaska is so under-developed in terms of our BIA roads, we are excluded from a majority of the funds. To illustrate this, I am asking the committee to imagine two Indian communities. Community A has a 5-mile road to an existing housing area. Community B has a need for a road. Community A, under the BIA funding formula, will receive a sizeable amount of money for a road they already have, whereas Community B, which has no road at all, will receive very little funding under the existing formula. They will receive consideration for population.

One of the unfortunate side effects of the BIA system is that true tribal road construction needs are never recorded or requested of Congress, and neither are the true roads maintenance needs for BIA owned roads. The other problems with the relative need formula include the cost to construct figures are derived from the BIA's own construction costs, which means there is no incentive to be cost efficient. The BIA road inventory system and the allocation system is excessively complex.

The data system is outmoded and in my view, unreliable and completely unverifiable. They are still using COBOL as of this summer to maintain their Indian reservation roads inventory. The way the system is set up is that tribes and local BIA offices can spend money on projects which are not in the BIA road inventory and thus prevent their need from going down.

One problem that we have experienced, which has really affected Alaska this last 1½ years, has to do with the Federal highway cost indices. In 1997, there were no projects reported in the State of

Alaska for Federal highways. And because of this, the Bureau of Indian Affairs, rather than using a 1997 Federal highways indices, they reverted to a default factor, which resulted in Alaska receiving, for our cost to construct portion of the formula, 93 percent of 1987 costs.

The BIA formula focuses on roads to the exclusion of other IRR funds. The current statute reflects transportation assistance. And because 80 percent of the money is currently allocated toward existing BIA roads, for those areas which have very little roads get very little funding. In our area, because we have no roads, we do have a lot of other transportation assistance needs. For example, a ferry system.

The CHAIRMAN. When I was up there with Senator Stevens, I couldn't see if there were roads under all that ice and snow. Are most of the roads around Nome paved?

Ms. BULLARD. No; they are not. In fact, Nome is, I think probably the exception to the entire State of Alaska, in that Nome is one of the few subregional centers in Alaska which has any roads at all. If you go to Kotzebue, Barrow, Bethel, there are no roads outside the community.

And our villages, there are no roads connecting our villages except for one. And because we do not have BIA roads, we do not get any money to build roads. That is the problem with the system.

In terms of the negotiated rulemaking process, we had wanted to participate in this process because we thought this would give us an opportunity to develop a new funding formula, since we considered the old one to be broken. I am participating in the formula work group. And the process is broken.

We have been meeting now since April of this year, and there is currently no funding formula seriously under consideration. I would say a good part, a number of the individuals present in the funding formula group do not believe that there is a need for a new funding formula, so therefore, they are standing on a position that the funding formula should be status quo.

There is very little interest in changing the way the Bureau does business. Some of the problems with the funding formula, with the negotiation process, is that none of the senior BIA officials participating in that process have defined the process as requiring that a new funding formula be negotiated. No alternatives to the present funding formula have been developed or presented by Bureau officials, though Bureau officials at the funding formula work group have vigorously opposed changes suggested by tribal representatives.

Some Bureau area engineers in the funding group continue to blame the other regions for problems with funding, and assert that all problems can be fixed at the regional level. This is patently untrue. Any area only receives the aggregate relative needs share of its tribes.

And some of the tribal representatives are of the belief that if no consensus is reached through this process, the existing formula will continue in effect by default. There are tribal representatives who are opposed to change in the formula. No one wants to lose any money. At our most recent meeting in North Dakota, which was about two or 3 weeks ago, small tribe representatives had sug-



gested that because Congress had made an \$18.3 million available, totally new money available for the fiscal year 2000 appropriations, we had recommended or encouraged that the funding formula group or the full committee redirect some of this money to those tribes which have not accessed or been able to have any projects since 1992-99. We were not even able to get that through the committee.

I have three recommendations for this committee to consider. First, that Congress should give the Bureau of Indian Affairs clear direction that the negotiated rulemaking is expected to produce a new funding formula, taking into account the interests of all tribes and the criteria set forth in TEA-21. Further, that if no consensus is reached, Congress should be prepared to legislative an allocation method in 2001.

Second, there should be a Congressional audit of the BIA's transportation program. An independent analysis of the way the Bureau allocates and spends IRR money would in the long run help the BIA, the tribes and the Congress make a more efficient program, more finely tuned to the needs of Indian people. An audit would bring the light of day to the program.

Third, we believe that Congress should seriously consider transferring the entire Indian reservation roads program to the Federal Highways Administration in such a way that would preserve tribal contracting authority. We just think that the current program is broken right now, there doesn't seem to be any interest in changing it, and we think that this would help address this.

I would like to thank you for allowing me this opportunity to testify, and that I hope this committee will continue to exert pressure on the Bureau or take more direct action to ensure that the Indian Reservation Roads funds are fairly distributed and efficiently used. [Prepared statement of Ms. Bullard appears in appendix.]

The CHAIRMAN. Thank you.

We will now move to Bobby Whitefeather, but I might say that under this current formula, it looks to me like we are basically ensuring that no new roads are going to get built.

And I would like to welcome Senator Wellstone here to the committee today. Did you have any comments or a statement?

#### **STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA**

Senator WELLSTONE. Thank you, Mr. Chairman. I am going to be very, very brief. I am running between things. I would like to thank you for the hearing, and all of the witnesses. I do think the state of infrastructure in Indian country is not anything that we can be proud of. I do want to welcome Chairman Bobby Whitefeather of the Red Lake Band of Chippewa, from my own State of Minnesota. With him is Jim Garrigan, who is the Roads Director for the Red Lake Band.

I believe that Mr. Garrigan also serves as tribal representative to the TEA-21 negotiated rulemaking committee. And I think this is a strong statement of the confidence that other tribes have in the Red Lake Band. And I hope that the Committee will listen very carefully to their words.

I think the only thing I am going to say about what all the panelists have been focused on is I think the tribal leaders before us, before this committee, are going to raise, and have raised, some very serious issues about the implementation of TEA-21, and the Indian reservation roads program. Some, like the obligation limitation issue, are matters for the Congress to address, for us to address. Others are in the court of the Department of the Interior and the BIA, and as the Senator from Minnesota, I just want to say to Interior and BIA that I want to vigorously champion the rights of tribes in my State, and for that matter, in all States, to get a fair piece of the pie and to be dealt with in a manner that is fair by the Departments.

Thank you.

The CHAIRMAN. Thank you for being here, Mr. Whitefeather. You have been here before the committee many, many times. We appreciate your comments.

I noticed with interest an old friend out in the audience, Jerry Sikorsky is sitting back there. Is Jerry working on your roads?

Senator WELLSTONE. He's a young, young friend. He's a flag man.

The CHAIRMAN. Nice to see you. Go ahead, Mr. Chairman.

**STATEMENT OF BOBBY WHITEFEATHER, CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS TRIBAL COUNCIL, ACCOMPANIED BY JIM GARRIGAN, ROADS DIRECTOR, RED LAKE BAND OF CHIPPEWA INDIAN TRIBE**

Mr. WHITEFEATHER. [Greeting given in native tongue.]

Mr. GARRIGAN OR Mr. Trujillo will interpret that for the record. Mr. Chairman, that was my extended version of saying "how." [Laughter.]

Mr. WHITEFEATHER. I guess I am have to inform the committee that I am required by our tradition to greet you in our language, and if I don't, Grandma back home will hear about it. So I don't want to get in any trouble.

But Mr. Chairman and members of the committee, it is certainly a pleasure this morning to appear before you to talk with you about the Indian reservation roads system and our experiences, good, bad, with agencies that we have to deal with.

I want to first of all introduce Mr. Jim Garrigan, who is our tribal roads director. He is a tribal member of the tribe, and recently completed 32 years of service with the Bureau of Indian Affairs, under their tribal roads program. So in our estimation in Red Lake, he has had sufficient on the job training and has earned his eminence credentials by our standards to conduct our roads projects with due diligence.

Also I would say that Mr. Garrigan is the premier expert on Indian reservation roads in the United States, by virtue of his involvement, and also he is cochair of the negotiated rulemaking committee that is negotiating the rules and regulations for TEA-21. This morning, I would like to highlight five areas of concern that we have as a tribe, and just a brief summation of issues such as obligation limitation, BIA's misdirected use of Indian reservation road moneys, barriers to self-governance, negotiations under TEA-21, BIA's obstructive stance on the negotiated rulemaking process,



and the inequity in funding from the Federal Highway Administration trust funds.

Just to give you a little background, Mr. Chairman and members of the committee, of the Red Lake Indian Reservation, we are a reservation that is not subject to Public Law 280. And our area comprises approximately 840,000 acres of water and land. Within that boundary, we have approximately 9,500 tribal members.

One of the unique attributes of the Red Lake Nation is that we are charged with the full responsibility of governing services. So we do not have the opportunity to share services or share resources with counties, sometimes with the State, although it is mostly at their discretion. And so it is truly a situation of true governance of where, the necessary services that we provide for our people.

The road system in Red Lake and the bridge system is in very, very poor condition. With the advent of welfare reform, where we are basically isolated from major metropolitan areas, we have no jobs. And it is going to be difficult to encourage our tribal members to get the training, to get the education necessary to be competitive in the work force. It is one of our priorities to develop a transportation system, a transit system, if you will. But if the infrastructure is not there to adequately transport our members, it is a further challenge.

And I must say again, we have one of the largest road systems in the Minneapolis area for sure, if not one of the largest in the country.

The first issue, obligation limitations, it is our assertion that there is a diversion of funds that is occurring. However, probably not intended by Congress when they enacted the TEA-21. And we do appreciate the committee's work and the rest of the Senators that made it possible to include tribal roads in TEA-21, particularly Senator Domenici. Our appreciation to him and all of you.

For the number of funding that is identified to go with tribes of \$225 million, is not accurate this past year. Also next year, \$275 million is not accurate, because of obligation limitation. There is a deduct that we did not know was a part of the process. And we are of the assertion that the obligation limitation is not the right thing to do, because of the condition of our systems in tribal Indian reservations. With the good economy that the United States is enjoying, Indian tribes are lagging further and further behind. So we ask Congress to address this issue.

The next item is our assertion of a misdirection of road moneys by the BIA, with the issue of up to 6 percent funds. Mr. Garrigan, who has worked within the system previously, has personally identified areas where there have been misdirection of Indian road funds for uses other than tribal roads. As examples, using funds to move office headquarters from one location to another in the Minneapolis area; administrative supportive costs that have no relation to roads; unrelated travel costs. All of these can be attested to by Mr. Garrigan.

We ask this committee and Congress to please conduct an inquiry, demand a full accountability of our assertions. Our reservation roads need access to every available resource that we can get.

Just last Friday, we took a photograph of the boundary area of the Red Lake Indian Reservation, where the State of Minnesota

had improved State Highway 89 up to the reservation line, and a photo has been provided to the committee for your review. We cannot understand why the improvements stopped at the reservation line. That displays to us some inequity.

Also some of the other witnesses here have testified to the difficulty in working with the Bureau on compacting. The TEA-21 legislation expressly allowed for the inclusion of TEA-21 under self-governance and 638. Since 1994, the Red Lake Nation has attempted to contract and compact the functions of tribal roads. So far what we have been able to do is be a part of a demonstration program.

In our efforts to work with the BIA, we run across obstacles such as them telling us no to advanced funding, no to tribal control, no to access of the 6 percent. The most glaring example of paternalism, Mr. Chairman, and members of the committee, is that the Bureau of Indian Affairs requires us, tribal roads in Red Lake, to have State certified engineers for the design of our work that we propose. While at the same time, at the Minneapolis Area Office, their supposed engineer does not possess, I repeat, does not possess, the same qualifications. It is the height of paternalism that we are subjected to, and we object strongly to that. Again, I ask Congress to examine that methodology.

Again, the conduct of the BIA in the negotiated rulemaking process is unconscionable. I speak from experience in negotiated rulemaking, because I was an active participant in NAHASDA. With good coordinated effort, good faith, honorable dealings, we were able to complete the negotiations under NAHASDA in record time. And the negotiated rulemaking process under TEA-21 was patterned after the NAHASDA effort.

Right from the beginning there were obstructions, obstacles, protocol. We did not have any trouble getting the Secretary of HUD to sign onto the protocols. Some of the bureaucracy in the Bureau of Indian Affairs objected to having the Secretary be a signatory to the protocol. That is not right.

At this point in time, the process is way behind schedule, and may have stalled. There are contentious issues, sure, such as the formula. But in our experience in NAHASDA, the formula was left for last. We wanted to get past all the negotiable points and the formula was the last issue that we dealt with. And we did so in good faith and honorable dealings with not only tribes, but also with the Federal Government.

Last, I would like to request an examination of inequity in funding, when it comes from the viewpoint of the Federal Highway trust fund. Reservation roads comprise approximately 2.63 percent of roads across the country. Yet our funding is 1 percent of the allocation. So I would like to request the committee to examine that.

In conclusion, the reports of the obstruction and poor cooperation by the Bureau of Indian Affairs is very disturbing, very disturbing to us. We would like to urge that Congress and this committee do what you can to examine our assertions, feel free to question Mr. Garrigan about some of the obstacles that we have been faced with. Because we, as Red Lake Nation, as mandated by our ancestors, want to deal with others with good faith and honorable dealings.

A final recommendation is perhaps, since we have had such an adversarial relationship with the Bureau of Indian Affairs, for the most part, over my time on the council, especially with the roads, maybe it is time consideration be made to transfer the function over to the Federal Highway Administration. And I am testifying here before you, Mr. Chairman and members of the committee, out of some fear by my tribe of repercussion from the Bureau of Indian Affairs on some critical matters that we have under discussion with them today.

And finally, I want to say, Mr. Chairman, especially Senator Wellstone, the invitation still stands for you to come and visit our homeland. Thirty-five or 40 below in Alaska is nothing compared to 60 degrees in Minnesota. [Laughter.]

Mr. Garrigan and I stand ready to answers that you may have. [Prepared statement of Mr. Whitefeather appears in appendix.]

The CHAIRMAN. I am still recovering after visiting Ms. Bullard's country.

Mr. Chaco, do you have comments?

**STATEMENT OF PAULSON CHACO, DIRECTOR, NAVAJO NATION DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY SAMUEL JOHNS, ASSISTANT DIRECTOR AND SEAN PENSONEAU**

Mr. CHACO. [Greeting given in native tongue.]

I would like to say good morning, Mr. Chairman and members of the committee. That is the Navajo version for "how." [Laughter.]

My name is Paulson Chaco. I am the director for the Navajo Nation Department of Transportation in Window Rock, AZ. I have with me Samuel Johns, who is the assistant director for the program. And also Sean Pensoneau of the Navajo Nation Washington, DC office.

On behalf of President Kelsey Begay of the Navajo Nation, we welcome the opportunity to provide testimony to the committee about the implementation of the Transportation Equity Act of the 21st Century, TEA-21, which is an important piece of legislation. TEA-21 is particularly important to the Navajo Nation, since the Navajo Nation has such a large land base and in desperate need of roads. We have approximately 8,000 miles of road, of which 6,000 miles is unimproved.

In particularly today, the Navajo Nation would like to bring to the committee's attention in its experience with the negotiated rulemaking process and concerns the Nation has with distribution of funds. Especially the obligation limitation imposed by section 1102 of TEA-21 and the bridge replacement program. Overall, the negotiated rulemaking is progressing, although not at the speed which was originally desired. The original delays in naming and organizing the rulemaking committee were compounded by the fact that the Secretary of the Interior was reluctant to sign off on the protocol.

These delays have impacted the ability of the rulemaking committee to develop final product in accordance with proposed time lines. Nevertheless, it is anticipated that the possible exception of funding formula, which will be discussed shortly with the other aspects of the proposed regulation, will be ready for release soon.

Of the four work groups which make up the negotiated rule-making committee, the work group most in controversy is the funding formula work group. This work group has been tasked the review and development of possible alternative methods for distribution of funds under the IRR program. The funding formula work group has encountered problems surrounding the appropriate methods to address needs of smaller tribes who have asked that the work group and committee consider the possibility of set-aside of a portion of their IRR funding to be used as a base to address transportation projects, which might not otherwise be addressed as quickly.

The Navajo Nation has opposed such set-asides as being contrary to the underlying principle of the relative needs formula. However, this issue has brought about an impasse in the funding formula work group.

Over the course of the rulemaking meeting, it has become apparent that even after the rulemaking is concluded, much of its work needs to be done. In particular, this seems to be on two levels: Training, both general and specific to contracting and compacting; and the development of some standards regarding use of Federal acquisition regulations which would not otherwise apply to contracts under the Indian Self-Determination and Assistance Act.

In the process of some of the presentation, it is apparent that some employees of the BIA do not understand or agree with the goals of self-determination, let alone have the understanding of Indian Self-Determination Act requirements and provisions. This imposes a handicap on tribes and tribal organizations attempting to contract or compact. Probably the only effective method to address these misunderstandings is through comprehensive training for both BIA and tribal personnel. Not only could this training help improve the implementation of the law, but it would assist in making interpretation throughout Indian country uniform.

As far as obligation limitations, section 1102 of TEA-21 creates an obligation to redistribute approximately 10 percent of the Federal Lands Highway program to the States or the surface transportation programs. Unfortunately, the IRR program funding is located within the Federal Lands Highway program. While this may have started off as an attempt to address States' needs for funds and roads development around Federal lands, it has also deprived the IRR program of the needed funds. For example, in fiscal year 2000, the IRR program was allocated \$275 million. Yet the obligation limitation reduces that amount by \$32 million.

With respect to bridges, while the reductions imposed by the obligation limitation hurt the IRR program, their effect is worsened by the additional reduction caused by the delay of the inability of the Federal Government to distribute bridge replacement funding for fiscal year 1999 has gone by. Yet \$13 million designated for bridges is still being withheld. In the current year, an additional \$13 million is being withheld, for a total of \$26 million.

The obligation limitation will apply to withheld amounts, actually increasing percentages to be turned over to the States. The Navajo Nation believes it is critical that the Federal Highway release these needed bridge replacement funds immediately before

additional funds pile up. As these funds withheld by the Federal Highway continue to grow, so does the need for bridge replacement.

The Navajo Nation thanks the Senate Committee on Indian Affairs for the opportunity to express its concerns and observations regarding the implementation of TEA-21. If the Committee has any questions about the Act and its impact on the Navajo Nation, we will be glad to address those concerns.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Chaco appears in appendix.]

The CHAIRMAN. Thank you. I have already asked most of my questions for Governor Thomas. Let me ask a couple of others. To Ms. Bullard, the way I read this formula, about 80 percent goes to the upkeep of existing roads. As I see it, big tribes have a lot more existing roads than small tribes, particularly in your part of the country. Does that put you at a pretty big disadvantage, if you are only getting 20 percent toward new roads, and you do not have any existing ones, it would seem to me that the small tribes, particularly, would have a huge disadvantage from the big tribes.

Ms. BULLARD. Yes; I agree. I think it is a question of the haves, who have roads, and those without roads. I do not even think it is a big tribe-small tribe issue. I think it is those with roads and those without. And historically, Alaska has very few roads projects. So we do not have any roads.

The CHAIRMAN. You seem to have a better relationship with the Bureau than some of the tribes do. But as I understand your testimony, you recommend that the Federal Highway Administration be the lead agency. Is that correct?

Ms. BULLARD. Yes; that is correct.

The CHAIRMAN. Why?

Ms. BULLARD. We get along fine with Juneau Area. We have a very good working relationship with them. But I think what we are seeing is the money coming from central to the area is where we are having problems.

The CHAIRMAN. I see. Chairman Whitefeather, as with some other witnesses in separate letters that the committee has received, there have been some pretty disturbing comments and accusations, from everything from foot-dragging to actual misuse of funds. I am going to confer with Senator Inouye and probably ask the GAO to look into some of those charges, and I hope to get a little more information.

But I wanted to stand corrected about one thing. A while ago, I in my poor mathematical judgment estimated that 6 percent of \$275 million was around \$8 million. It is not. My very astute staff informs me it is about \$15 million, a considerable amount more. And I think you understand the legislation that was passed, TEA-21, as I do, and that is that all funds are available to tribes for the purpose of contracting and compacting.

What has the Bureau's response been to the request for self-governance compacting to you?

Mr. WHITEFEATHER. It is our understanding, when we had a part in the development of the legislation called TEA-21 is that all road program funds were to be available under self-determination and self-governance.



The CHAIRMAN. You also charged that the so-called 6 percent of administrative funds are sometimes used for subsidizing non-road purposes. Do you have any evidence of that or any statistical evidence?

Mr. WHITEFEATHER. I would like to ask Mr. Garrigan to respond to that, please.

The CHAIRMAN. Yes; identify yourself for the record, please.

Mr. GARRIGAN. My name is James Garrigan, I am the director of the Tribal Roads Program at Red Lake.

Mr. Chairman, those allegations that we got were relayed to me from other people. And without an accounting of the 6 percent administrative funds, we have no way to prove that until we do get an accounting, so we can look at how these funds are actually expended.

The CHAIRMAN. Well, maybe the GAO will be able to find that out. But there has been some people that have alluded that that 6 percent funds has turned into a slush fund for whatever might arise.

Do you also agree, Chairman Whitefeather, that the Federal Highway Administration should be the lead agency on the reservation roads program?

Mr. WHITEFEATHER. At this point, I believe that we get a position to do what we can to work within the existing system. But if that is not possible and we continue to run into obstacles every time we make some progress, that may be the only eventual alternative.

The CHAIRMAN. I see. That will conclude our hearing. I appreciate your being here. The record will remain open two more weeks, if there is any additional information, or if you happen to find some proof of misusing that 6 percent, I would like to know about it. I am sure the rest of the committee would, too.

Ms. THOMAS. Chairman Campbell.

The CHAIRMAN. Yes, Governor Thomas.

Ms. THOMAS. If I may, you recognized your astute staff. I wondered for the record, regarding the return of the \$12 million, that money had been returned to Washington, and there was no indication that it would ever be returned. But we came back to Washington for several meetings with the Bureau office here, and just within the last few months they did indicate that it was going to be returned.

So there it still sits, we haven't done any construction yet.

The CHAIRMAN. You have been told it was going to be reprogrammed, but it hasn't got there yet?

Ms. THOMAS. Right.

The CHAIRMAN. Thank you.

Mr. CHACO. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. CHACO. I also just received a note from my staff. Recently, the Federal Highway conducted a process review of the Navajo BIA office. We would request a copy of that review.

The CHAIRMAN. Okay. With that, I thank you, and this hearing is adjourned.

[Whereupon, at 12:02 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

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## APPENDIX

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### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM NORTH DAKOTA

Mr. Chairman, thank you for holding this hearing on how the Transportation Equity Act for the 21st Century, commonly known as TEA-21, affects Indian country.

I believe TEA-21 is one of the most significant pieces of legislation passed by Congress this decade. The need to improve our Nation's infrastructure has been brought to our attention time and again. We depend on safe, reliable highways, roads, bridges, and transit systems, and last year we took bold action to provide the resources needed to build, repair, maintain, and improve surface transportation systems and structures.

Our Nation's surface transportation has wide-reaching effects on Americans of all ages in all parts of the country. Children riding on schoolbuses, employees driving to work, businesses shipping products, senior citizens receiving daily meals-on-wheels services, and families traveling on vacation all depend upon safe, well-maintained roads and bridges.

But we are asking Indian country to make do with roads that are in the worst condition among Federal-aid system roads.

Only 11 percent of the BIA roads are paved and rated in "good" condition. Nearly 90 percent of the unpaved roads are in "poor" condition, which is defined by the Transportation Department as "needs immediate improvement to restore serviceability."

I don't know how many people at this hearing have been on the roads on the reservations in North Dakota, but I can tell you, many of them are barely passable. In the winter and spring, deep snow and mud overwhelm the roads, keeping people from work and children from school. I have heard from tribal elders who in the dead of winter fear that help will not be able to reach them if they are trapped in their homes without food or heating fuel. It is shocking to think that these types of conditions exist in a country with one of the greatest transportation systems in the world.

The Fort Totten Indian Reservation is surrounded by a lake—Devils Lake—that has risen about 25 feet since 1993, inundating many of the major roads in the area. However, the Indian Reservation Roads program often cannot provide enough funding to keep these roads out of the water or to keep the remaining alternative routes in adequate condition.

Another problem that I would like to highlight is the inadequate amount of funding within the Indian Reservation Roads program for bridges, which is only approximately \$13 million annually. There is a bridge in my state on the Fort Berthold Indian Reservation—the Four Bears Bridge—that is in dire need of replacement. The Four Bears Bridge was relocated from another site to the Fort Berthold Reservation in 1952 by the Army Corps of Engineers during construction of the Garrison Diversion. Because the bridge is only 22 feet wide, it has been considered functionally obsolete since the day it opened. I have traveled across this bridge on numerous occasions, and, believe me, it is a scary experience.

Local traffic has continued to increase on the bridge, particularly since the tribe's casino opened on the opposite side of the bridge from New Town, ND. Because the



bridge is the only link between the west and east sides of the reservation, it is a vital route for emergency vehicles, schoolbuses, police, and general local traffic. In addition, this bridge is one of only a handful of places to cross the Missouri River in North Dakota, making this a critical priority within the State.

If the Four Bears Bridge is not repaired or replaced in the near future, there will be serious maintenance concerns to be addressed, including badly peeling lead paint.

According to the North Dakota Department of Transportation, the cost-estimate for the replacement of this bridge is \$43.2 million. When considering that the Indian Reservation Roads program allocation for bridges is approximately \$13 million annually for all bridges in Indian country, we can see how woefully inadequate this level of funding is.

TEA-21 sets the framework for improving, maintaining, and expanding the capacity of our Nation's surface transportation system, but we can see that greater efforts are needed to bring roads in Indian country up to the same standards as roads in other parts of the country. We must not forget: this is ultimately a Federal responsibility.

Again, Mr. Chairman, thank you for holding this important hearing.

PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

In the late 1950's, BIA road construction and maintenance funding reached a high of \$10 million for the first time in history. The BIA now spends more than twice that amount on maintenance alone. Next year's budget includes about \$26 million for road maintenance in the BIA budget. Indian road construction has been carried out since 1982 with the more consistent aid of our Federal highway trusts funds funded through the gasoline tax.

1979, BIA road budgets (construction and maintenance) reached their peak of almost \$80 million, and then fell off rapidly.

In the Surface Transportation Assistance Act of 1982, after my amendment to include Indian tribes in the highway trust fund for the first time in history, the funding levels for IRR stabilized at about \$100 million, through the Highway Trust Fund for years 1984-86.

The 1987 Surface Transportation and Uniform Relocation Assistance Act reduced the annual Trust Fund authorization for Indian tribes to \$80 million for fiscal years 1987-91.

In the ISTEA authorization, many of us in the Senate worked to increase Indian Reservation Roads funding to \$200 million per year, we compromised with the House's lower figure of about \$150 million to achieve an annual funding amount of \$191 million under ISTEA. This level prevailed from 1992 through 1997.

When ISTEA reauthorization was before us in 1997, Senators Inouye, Campbell, Bingaman, and others joined me in sponsoring S. 437 to increase IRR funding to \$250 million in 1998, \$275 million in 1999, and \$300 million thereafter through 2002. In its final version, the Transportation Equity Act for the 21st Century (TEA-21) allocated \$250 million for 1998, and \$275 million each year from 1999 through 2003 for Indian Reservation Roads.

After 17 years of direct involvement in the funding of Indian Reservation Roads through the Federal Transit Administration of the U.S. Department of Transportation [DOT], I am very pleased with our successes in convincing Congress to increase funding as the needs were made known. We have come a long way since the days that the BIA was the only source of funding for Indian road construction and maintenance. The BIA continues to provide about \$26 million per year for road maintenance, but the construction and bridge funds now come from DOT.

While the funding picture has improved, we still have problems to address. One that continues to bother me is the "obligation limitation" issue wherein Federal Lands Highways Program money, including IRR funds, are subject to an automatic reduction that amounted to \$31 million in fiscal year 1999.

This reduction came off the total \$270,875,000 available for IRR (after 1.5 percent or \$4.125 million is allowed from the total of \$275 million for administration by the Federal Highway Administration-FHWA). It was a 11.7 percent reduction (\$31 million), which is substantial, and definitely felt in Indian country.

The purpose of the reduction in the Federal Lands Highways Program is to give States control over a portion of funds for Federal roads on State lands. This makes sense for most Federal roads, but not Indian Reservation Roads.

I raised this issue with Senator Shelby of Alabama, chairman of the Transportation Appropriations Subcommittee. He initially agreed with me in a colloquy to resolve this issue. When his legal staff reviewed this commitment, the Chairman

was told that a "fix" would require an amendment to the authorizing legislation for TEA-21. For those of you who follow Senate procedure, our reinstatement of Rule 16 does not allow us to take this action in an appropriations bill, except in very strict circumstances.

As a result, the final Transportation Appropriations bill we passed in the Senate did not change the "obligation limitation" for the Indian Reservation Roads Program in the Federal Lands Highways section. We were able to add \$18.3 million from another provision in TEA-21 that allows us to add more revenue to programs when gasoline tax collections are up as they have been this past year. This is another little known, but very helpful provision of TEA-21 known as RABA (revenue aligned budget adjustments).

Thus, our new total for IRR funding for the fiscal year 2000 will be \$275 million plus \$18.3 million or \$293.3 million. Unfortunately, this new total, a record high for Federal funding of Indian roads, will still be subject to the obligation limitation. If it is 11.7 percent again, it appears to me that the \$293.3 million will first be reduced by 1.5 percent for FWA administration or about \$4.4 million. This leaves \$288.9 million subject to a further 11.7 percent reduction, or a \$33.8 million reduction for fiscal year 2000.

I want my colleagues to know that I oppose this obligation limitation provision that did not operate in ISTEA, the former authorizing legislation. I hope members of this Senate Committee on Indian Affairs would join me in an effort to amend TEA-21 to hold the IRR funding harmless from this substantial reduction of funds that are needed by the tribes more than the States.

Another concern I have is the manner in which the IRR funds are distributed once they reach the BIA Area Road Engineers. Those of us who seek fairness determining the distribution of these funds are concerned that there is discretion in the Phoenix and Gallup offices that is not consistent with funding formulas.

This problem is especially acute in Phoenix. The Gila River Indian Community and resulted in a \$2.3 million deficit in 1998 alone. This deficit is a clear avoidance of the intent of the relative needs formula in effect in 1998.

As the negotiated rulemaking continues to create a new formula for TEA-21 I want to ask the BIA leadership, through Assistant Secretary Kevin Gover, to assure this committee that formulas will be applied equitably at the area as well as the national levels when DOT funds are distributed through BIA channels.

Zuni Road Emergency I have recently become aware of a pending request by the Zuni Pueblo of New Mexico for assistance through emergency funding for roads at the Zuni Reservation that have been severely damaged by flood waters.

I would like Mr. Arthur Hamilton of the Federal Lands Highways Program at DOT to provide me with information about the availability of funds for the Zuni Pueblo to resolve this emergency situation. My office has forwarded details of this situation to DOT.

**TESTIMONY OF  
ARTHUR E. HAMILTON  
PROGRAM MANAGER, FEDERAL LANDS HIGHWAY  
FEDERAL HIGHWAY ADMINISTRATION  
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**BEFORE THE COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
OCTOBER 20, 1999**

**OVERSIGHT HEARING ON INDIAN RESERVATION ROADS AND  
THE TRANSPORTATION EQUITY ACT OF THE 21<sup>ST</sup> CENTURY**

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today to discuss the Department of Transportation's (DOT) implementation of provisions in the Transportation Equity Act of the 21<sup>st</sup> Century (TEA-21) affecting the Indian Reservation Roads (IRR) program of the Federal Lands Highway Program (FLHP).

**History**

The IRR program was established on May 26, 1928, by Public Law 520 (Codified at 25 USC 318(a)). The act authorized appropriations for survey, improvement, construction, and maintenance of IRR not eligible for Federal-aid highway funding. The partnership with the Bureau of Indian Affairs (BIA) and Federal Highway Administration (FHWA) began in 1930 when the Secretary of Agriculture was authorized to cooperate with State highway agencies and the Department of the Interior (DOI) in the survey, construction, reconstruction, and maintenance of IRR serving Indian lands. The first BIA/FHWA Memorandum of Agreement (MOA) was signed in 1946 and addressed the location, type, and design of all IRR roads and bridges and the general supervision of all such IRR construction. In 1996, the FHWA entered into a Stewardship

Plan with BIA, similar to the plans under which the FHWA delegates oversight of Federal-aid highway projects to the States.

TEA-21 reaffirmed the Federal Government's commitment to providing safe and efficient access to and within Indian lands and Alaskan native villages by authorizing \$1.6 billion in funding for the IRR program for Fiscal years 1998-2003. TEA-21 also strengthened the commitment of the Federal Government to increasing the involvement of Native Americans in transportation programming and planning by, for example, clarifying that funds under the IRR program shall be available to tribal governments from the BIA for direct contracting of transportation projects.

#### **Increasing Tribal Involvement**

The Department of Transportation is committed to building more effective day-to-day working relationships with Indian tribal governments reflecting respect for the rights of self-government and self-determination, based on principles of tribal sovereignty.

In February 1998, the FHWA Indian Issues Task Force issued a report entitled "Guidance on Relations with American Indian Tribal Governments," that provides a framework for FHWA to establish and enhance its government-to-government relations with Indian tribes. This report was distributed to all FHWA field divisions.

In addition, the Department of Transportation is finalizing its policy for working with tribal governments. The policy is being issued as a DOT Order developed by a ONE DOT Task Force. This Order will implement President Clinton's Memorandum on Government-to-

Government Relationships with Native American Tribal Governments and his Executive Order No. 13084, "Coordination and Consultation with Indian Tribal Governments." We expect to issue this DOT order in November during Native American Heritage Month.

#### **Transportation Planning Procedures**

As part of the requirements in 23 USC 204(j) to develop transportation planning procedures for the IRR Program, the FHWA and the BIA, in consultation with the tribal governments, developed the "Indian Reservation Roads Program Transportation Planning Procedures and Guidelines (TPPG)." The document is now available as interim guidance effective this month, October 1999.

The TPPG represents a combined effort to define the transportation planning function under the IRR Program. The document explicitly states what is guidance for Indian Tribal Governments and what is a procedural requirement of the law consistent with 23 U.S.C. Section 204(j), "Indian Reservation Roads Planning," and Public Law 93-638, "The Indian Self-Determination and Education Assistance Act," as amended. It also clarifies policies related to funding issues and eligible activities and defines the relative transportation planning roles and responsibilities of the BIA and Indian Tribal Governments. The TPPG, developed in conjunction with tribal transportation planners, represents a good basis for tribes entering into planning activities with other tribes, as well as with State and local governments.

In August 1999, we began conducting training on the IRR transportation planning procedures in cooperation with the BIA and Tribal Technical Assistance Program (TTAP)



Centers. We will be holding a series of two-day workshops offered in all 12 of the BIA regions. State transportation planners are also participating in these workshops.

#### **Tribal Technical Assistance Program Centers**

Section 5104 of TEA-21 continued the requirement that we establish local Tribal Technical Assistance Program Centers. We now have cooperative agreements with Colorado State University, Eastern Washington University, Michigan Technological University, Oklahoma State University, and the United Tribes Technical College in Bismarck, ND, and provide funding to the State of Alaska Center. These TTAP Centers provide training and education workshops for Tribal Governments and disseminate information on issues related to the IRR Program and road maintenance.

#### **IRR Bridge Program**

Section 1115 of TEA-21 amended title 23 USC to require the Secretary to establish a nationwide priority program for improving deficient IRR bridges, using a set-aside of not less than \$13 million of IRR funds per year.

In order to develop guidance for the Indian Reservation Roads Bridge Program (IRRBP), the FHWA solicited comments through informal meetings with tribal representatives in December 1998. An IRRBP Federal Register Notice was published on February 12, 1999, soliciting comments on project selection and fund allocation procedures. Comments were received from tribal governments, BIA offices, and county and State DOT offices. An Interim Final Rule was published on July 19, 1999.

During fiscal year 1999, we funded all of the eligible 11 deficient IRR bridge projects that were submitted, using about \$8.9 million of the IRRBP funds.

In cooperation with the BIA and the Indian technical centers, we are conducting training sessions on the program procedures and encouraging Indian tribal governments to identify their deficient bridges so that they can apply to obtain funding to repair or replace the bridges.

#### **Negotiated Rulemaking**

Section 1115 of TEA-21 required the development of a funding formula and IRR Program procedures using negotiated rulemaking with Indian tribal governments. Two days after TEA-21 was signed, FHWA sent a letter to the Department of the Interior requesting a meeting to discuss this rulemaking. As a result of this and subsequent meetings, the BIA: (1) hired the Federal Mediation and Conciliation Service to facilitate the rulemaking, (2) established a process for selecting tribal representatives for the committee, (3) developed an agenda for an informational meeting with tribal governments, and (4) established the 42 member rulemaking committee. Secretary Slater designated three FHWA employees to serve on the rulemaking committee. These employees are participating in the rulemaking committee and work group meetings. The Department remains fully committed to providing the necessary staff and IRR funding needed to complete this rulemaking. Additional information on the rulemaking is being provided to you by the BIA.

**Metlakatla IRR Project**

Before concluding, I would like to highlight one specific example of the Department's progress in carrying out Congress's directives in TEA-21. The Walden Point Road construction project for the Metlakatla Indian Community (MIC) of Alaska illustrates the diversity of the IRR program and successful program delivery through joint agency and tribal efforts.

The Walden Point Road project consists of constructing fourteen miles of roads and bridges to link Metlakatla with the Alaska Marine Highway System and with the proposed ferry terminal point at the northern end of Annette Island, improving transportation access to the rest of Alaska. The ferry system is part of the State's Southeast Alaska Transportation Plan, which includes two new terminal facilities and a ferry boat. The project also includes the relocation of power facilities in conjunction with the road construction. The completed project will provide economic opportunity to the Metlakatla Indian Community through the prospective sale of power to Southeast Alaska and by improving access to Ketchikan, the nearest port city and a major stopping point for cruise ships.

FHWA is the lead agency for this project. We cooperate with the Department of Defense (DOD), the Metlakatla Indian Community (MIC), the Alaska Department of Transportation and Public Facilities (ADOT&PF), and the BIA. Our Western Federal Lands Highway Division (WFLHD) is providing bridge design services for the project, while the BIA has provided the funding for the bridge design services and the work associated with the archeological and NEPA processes. Through its Innovative Readiness Training Program, the DOD is providing the heavy equipment and active duty forces for road construction operations.

The funding within the Indian Reservation Roads (IRR) Program alone is not adequate to accomplish the Metlakatla Project. We have also provided Public Lands Highway Discretionary funds to this project. Through new partnering of Federal agencies and tribal entities, leveraging of funds, and flexibility in funding, this joint effort is making expanded transportation access to Metlakatla possible.

#### **Conclusion**

To conclude, we are working hard to implement the IRR provisions of TEA-21 as quickly and effectively as possible, and we believe that implementation has gone smoothly. However, we recognize that transportation is a critical tool for tribes to improve the quality of life in their communities to and that there are still many challenges to overcome. The Department of Transportation will continue to do its best to meet tribal expectations. We look forward to working with this Committee to ensure that remaining issues are addressed in a timely, effective, and responsive manner.

Mr. Chairman, this concludes my prepared remarks. I will be glad to answer any questions you or other Committee Members may have.

**Post-Hearing Questions  
October 26, 1999 Hearing on the Indian Reservations Roads Program  
from Senator Inouye for  
Arthur Hamilton, Program Manager, Federal Lands Highway Program  
Federal Highway Administration**

**QUESTION:** On page five of your testimony it states that in Fiscal Year 1999, you funded 11 reservation bridge projects using about \$8.9 million of \$13 million set aside for bridges.

What happened to the unspent balance of about \$4.1 million?

Was it carried over into Fiscal Year 2000 for use on bridge projects?

**ANSWER:** The unspent \$4.1 million of Indian Reservation Roads (IRR) bridge funding was carried over into Fiscal Year 2000 and is available for use on eligible bridge projects.

**QUESTION:** Several tribal witnesses testify that the Congress should transfer the entire Bureau of Indian Affairs roads program to the Federal Highway Administration as a way to eliminate red tape and make more money available for road and bridge construction.

Do you think there is merit to this suggestion?

**ANSWER:** The Bureau of Indian Affairs owns many of the roads for which the IRR program provides funding and, as the owner, must be involved in road construction and maintenance decisions. Therefore, we do not think it would be appropriate to transfer the program to the FHWA.

The Federal Highway Administration works closely with the BIA to accomplish the purpose of the IRR program, which is to provide safe and efficient transportation and public road access to and within Indian reservations, Alaska Native villages, trust or restricted lands, while increasing tribal involvement in transportation planning and project implementation. We are aware that the tribes are frustrated with funding allocations and the amount of available resources. We have also been listening carefully to the concerns regarding the IRR program, voiced by tribal representatives at the October 20<sup>th</sup> hearing and in other forums.

Let me assure you that we are committed to working with the BIA and with tribal governments to improve program delivery. Administering a program the size of the IRR program, that affects so many tribes all across the country, at a time when available resources are insufficient to meet all demands, poses a significant challenge. However, we will strive, through our partnership with the BIA, to ensure that all issues raised by the tribes are addressed. In doing so, we will consider alternative ways of doing business that address and improve program delivery.

**STATEMENT OF ROBERT BARACKER, DIRECTOR, SOUTHWEST REGIONAL OFFICE, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS OVERSIGHT HEARING ON INDIAN RESERVATION ROADS AND THE TRANSPORTATION EQUITY ACT IN THE 21<sup>ST</sup> CENTURY (TEA-21)**

**October 20, 1999**

Good morning, Mr. Chairman and Members of the Committee. My name is Robert Baracker, the Director of the Bureau of Indian Affairs Southwest Regional Office. I serve as the designated Federal official for the TEA-21 Negotiated Rulemaking Committee. With me today is Leroy Gishi, the Division Chief for the Bureau of Indian Affairs (BIA) Transportation Program.

I am pleased to be here to provide you with an overview of the status of the BIA Indian Reservation Roads (IRR) program and the impact of the Transportation Equity Act of the 21<sup>st</sup> Century (TEA-21) on transportation programs for Indian people.

**BACKGROUND**

The IRR program was established on May 26, 1928, by Public Law 520, 25 USC 318(a). The Act authorized appropriations for survey, improvement, construction, and maintenance of IRR that were ineligible for Federal-aid highway funding. The partnership with the BIA and FHWA began in 1930 when the Secretary of Agriculture was authorized to cooperate with the State highway agencies and the Department of the Interior (DOI) in the survey, construction, reconstruction, and maintenance of IRR serving Indian lands.

The Federal-aid Highway Act of 1936, Public Law 686, Section 6, required that FHWA approve the location, type, and design of all IRR roads and bridges to be constructed using BIA funds. This requirement was also contained in Section 10(c) of the Federal-aid Highway Act of 1944, Public Law 521. The first BIA/FHWA Memorandum of Agreement was executed in 1946. In 1958, the laws related to highways were revised, codified, and reenacted as Title 23, USC by Public Law 85-767. The new title contained a definition of IRR and bridges and a section on IRR.

Between 1930 and 1982, Congress appropriated funds for the IRR in the Department of the Interior's (DOI) appropriations acts. Public Law 97-424, the Surface Transportation Assistance Act of 1982, incorporated the IRR program into the Federal Lands Highway Program (FLHP) and provided funding from the Highway Trust Fund. It also repealed Section 208 of Title 23. The law also made the IRR program subject to the other provisions of Title 23.

Under Title 23, the FHWA was required to (1) approve plans, specifications, and estimates (PS&E) for transportation projects, (2) monitor the work in progress, and (3) conduct a final inspection of the projects. Under 23 USC 117, Certification Acceptance, the State highway agency and the BIA could get a waiver from PS&E approval and project monitoring.



In 1991, Congress enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102-240. ISTEA made changes to the IRR program and created a set-aside of Highway Bridge Replacement and Rehabilitation Program funds for Indian reservation bridges.

With the enactment of the TEA-21, the IRR program was modified to include a Nationwide Priority Program for improving IRR deficient bridges, and a negotiated rule-making with Indian Tribal governments as required for IRR program procedures and the "relative need" funding formula. [1115(b)] Tribes will continue to contract for IRR projects under the Indian Self-Determination and Education Assistance Act provisions. The one percent set-aside of Bridge Replacement and Rehabilitation program funds for deficient IRR bridges established in ISTEA were eliminated. In addition, IRR funds may be used for transit facilities within Indian reservations. [1115(d)]

#### **IRR PROGRAM DESCRIPTION**

The IRR program is authorized under the FLHP, 23 U.S.C. 204, and the use of IRR funds is also defined within 23 U.S.C. 204. The TEA-21 authorized funding level is \$275 million for each of fiscal years 1999 through 2003. The program is jointly administered by the BIA Division of Transportation (BIADOT) and the Federal Lands Highway (FLH) of the FHWA.

The purpose of the IRR program is to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands and communities for Native Americans, visitors, recreationists, resource users and others while contributing to economic development, self-determination, and employment of Native Americans.

As of June 1999, the IRR system consisted of about 41,430 kilometers (25,700 miles) of BIA and Tribal owned roads and 41,270 kilometers (25,600 miles) of state, county and local government public roads and 1 ferry boat operation (Inchelium-Gifford Ferry of Washington).

From the \$275 million annual authorization, the FHWA reserves up to 1.5 percent for FHWA administration costs and \$13 million for the Nationwide IRR Bridge Program. The BIADOT and the FLH develop a plan for using the remaining funds. This plan includes operating expenses for the Federal Lands Highway Coordinated Technology Implementation Program (CTIP); the Local Technical Assistance Program (LTAP) centers for Tribal governments; and BIA administration (not to exceed 6 percent, as authorized in the annual DOI Appropriation Act). The BIADOT administers transportation planning studies for the reservations, bridge inspections, and pays for inventory updates, training, and atlas mapping. An additional 2 percent of the IRR funds are set-aside for transportation planning by Tribal governments.

The current joint BIA and FHWA approved formula is the Relative Needs allocation formula. The BIA distributes the construction funds to the 12 BIA Regional Offices. The formula is based on 20 percent population, 30 percent vehicle miles traveled (Average Daily Traffic x mileage), 50 percent cost-to-improve (the cost it would take to bring the road up to a given standard). This formula was approved for implementation after public notice and consultation with Tribes on a national level in

1993. In order to minimize the impact to Tribal projects, the formula was phased in over a 4-year period, 1993 through 1996. This replaced an allocation formula used since 1970, which was based on 1/3 population, 1/3 land area, and 1/3 road mileage.

The Indian Tribal governments develop and submit a priority list of projects to the BIA Regional Office which includes a letter of approval or Tribal resolution. The BIA gathers these project lists and develops a minimum 3-year transportation improvement program (TIP) for IRR and Bridge Replacement funds. The BIA reviews, approves and submits these TIPs to the FLH for approval. The approved project list includes the eligible projects for funding. The majority of the IRR funds are spent improving the BIA and Tribal public roads. Through cooperative agreements with the states and counties, IRR funds are also spent on Tribally prioritized projects for improving other roads on the IRR system.

The design of projects is performed by the BIA, Tribal governments, other Federal agencies, consultants, or State and local governments. In FY 1993, about 35 percent of the IRR construction was performed by Indian Tribal governments under Public Law 93-638 contracts, approximately 40 percent were done by Buy-Indian Act contractors, and approximately 15 percent was performed using Indian labor under BIA force accounts. In FY 1998, the percentage of Public Law 93-638 contracts increased to 50 percent, while the work performed under the Buy-Indian Act contractors decreased to 13 percent and the BIA force account laborers increased to 29 percent. The remaining projects were constructed by highway contractors selected by other methods.

#### **DESCRIPTION OF THE IRR MAINTENANCE PROGRAM**

In 1951, Congress began appropriating general funds for the maintenance of BIA owned roads in the annual DOI appropriations acts. To comply with 23 USC 204, the DOI includes maintenance appropriations in their annual budgets. As a condition for the continuance of Federal Lands Highway funds (Highway Trust Funds) for improvements and in accordance with 23 USC 116, the BIA Regional and Agency Offices are responsible for proper maintenance of BIA roads (using DOI funds) to protect the public investment and provide safe transportation for Tribal members and the general public.

The BIA currently receives about \$25.5 million per year for maintenance. On average this amount is less than \$500 per mile of road. Comparable state agencies estimate the maintenance need at about \$4,000 to \$5,000 per mile. The lack of proper maintenance is becoming evident in the frequency of reconstruction activities because roads are deteriorating prematurely. The BIA estimates that \$100 million per year is needed to adequately maintain BIA owned roads. The maintenance funds are allocated to BIA Area Offices by formula. The actual maintenance activities are performed by BIA, Indian Tribal governments under Public Law 93-638 contracts, compacts, inter-governmental cooperative agreements, or by other methods.

## **TRANSPORTATION PLANNING**

The key to the success of program delivery in recent years and the future is largely dependent on the transportation planning. Transportation planning on Indian reservations and lands is a cooperative effort involving Indian Tribal governments and the BIA. Transportation planning is the development of strategies for the design, construction, operation, and maintenance of transportation facilities for moving people and goods in a village, town, pueblo, rancheria, city, borough, county, township, parish, metropolitan area, Indian reservation, State, multi-State region, or country. Through the transportation planning process Tribal governments have developed long-range transportation plans, prioritized projects, Transportation Improvement Programs, and updated their IRR inventory. In FY 1998, Tribal governments contracted 151 transportation planning projects.

## **PROJECT DEVELOPMENT**

This functional area covers the scoping, development, review, and approval of projects identified on the 3-year IRR TIP. The BIA Regional Offices, in cooperation with Tribal governments, have the primary responsibility for the development of projects.

Project development is necessary to improve the condition of highway infrastructure and to improve safety, address environmental, archeological, and right-of-way concerns, ensure compliance with all Federal, State and Tribal statutes, and the engineering necessary to prepare Plans, Specifications and Estimate's for highway and bridge construction projects on the IRR system. In FY 1998, approximately 390 projects were undertaken by the BIA and Tribal governments at an estimated cost of \$230 million.

## **BRIDGES**

The IRR bridges consist of bridges which are BIA owned and non-BIA owned. These bridges must be on public roads which meet the definition of an IRR. Most of the IRR bridges that are on or provide access to Indian reservations are owned or maintained by states, counties or local governments. There are 745 bridges owned and maintained by the BIA in 30 states.

The BIA-owned bridge maintenance is funded under the DOI appropriations and is included under the general heading of "maintenance." It is considered a line item along with road maintenance, snow removal, ferry boat service, and airstrip maintenance. All BIA bridges are inspected every 2 years by the BIADOT. All BIA bridge piers are inspected under water every 5 years.

The IRR Nationwide Priority Program of Bridges funding and HBRRP (repealed with the TEA-21 Restoration Act, July 24, 1998) funds can be used for the replacement or rehabilitation of IRR bridges that meet the eligibility criteria. From 1992 through 1998, approximately 170 IRR bridges have been replaced or rehabilitated.

## PROGRAM ACCOMPLISHMENTS

Since the modern era of transportation development in Indian country, the Highway Trust funded IRR program has provided the basis for an ever growing need in Indian reservations, communities and lands across this country.

Since 1992 through 1997, the IRR program has built, reconstructed or improved on the average 200 miles of roads per year on or near Indian Reservations, villages and communities. During this same period, many bridges have been built, replaced or rehabilitated. As much as 50 percent of these bridges were part of cooperative agreements with State and local governments for bridges serving Indian communities and lands.

During this same period, as much as 94 percent of the available funds authorized have been directed toward the planning, design and construction of road projects. Through 1998, 77 percent of the funds authorized for the program are directed into the actual projects impacting Tribal priorities. According to the Federal Lands Highway program, this percentage is the highest of the federal land management agencies participating in the 23 USC programs.

These statistics are important when one considers the existing construction need inventory, which is estimated at \$6.6 billion. The construction need is the estimated cost to improve roads to an acceptable standard based on usage and capacity. Approximately two-thirds of the BIA road system are earth roads, of which 75 percent are unimproved earth roads. The remaining paved roads are reconstructed and resurfaced well in advance of the their design life because of the lack of maintenance. Simply stated, we are reconstructing and resurfacing roads on an interval of 7-8 years when the norm should be 10-15 years.

## TEA-21 OUTREACH MEETINGS

The United States Department of Transportation has successfully completed a series of TEA-21 national outreach sessions to consult with its partners and customers before the implementation of the majority of TEA-21. These national outreach sessions were scheduled from July through November of 1998 and conducted by Federal Land Highway staff in conjunction with the BIA Division of Transportation Office. In addition to the DOT outreach meetings, the BIA and InterTribal Transportation Association (ITA) held five regional town hall meetings on the implementation of TEA-21 as well as the transportation needs of Tribal governments into the 21<sup>st</sup> century. Each town hall meetings produced a consensus report that represented a statement by the participating Tribes and local/state transportation agencies on the needs and recommendations for transportation affecting Indian people. These town hall meetings conducted by the ITA were favorably received by Tribal representatives as a mechanism that provided them some ownership in defining their transportation concerns by consensus. These Tribal transportation town hall meetings were modeled after the New Mexico Town Hall meetings process. As a follow up to these meetings, ITA is working with those regions on an implementation plan. The ITA brought together the Tribal and non-Tribal governments in an effort to foster greater cooperation at the decision making level

of Tribal government. They are to be commended for their leadership in the Tribal transportation arena.

## **REGULATORY NEGOTIATIONS WITH TRIBAL GOVERNMENTS**

Regulatory Negotiations with Tribal governments on the establishment of a funding formula and program procedures. The TEA-21 highway reauthorization legislation was enacted on June 9, 1998. The Act included an increase in funding (\$1.6 Billion) for the IRR program. In addition, TEA-21 also provided for the establishment of a funding formula and program procedures through a government-to-government negotiated rulemaking (Negotiated Rulemaking Act of 1990) process with Tribal governments.

On November 15, 1998, a National Informational Meeting on Section 1115 of the Transportation Equity Act for the 21st Century (TEA-21) was held in Albuquerque, NM. This informational meeting was one of the first outreach meetings of any public agency required by TEA-21. A Notice of Intent To Form a Negotiated Rulemaking Committee and Accept Applications for Membership Under Section 1115 of TEA-21 was announced shortly thereafter. Nominations were submitted by the Tribes within the 12 BIA Regions for consideration and appointment as committee members and alternates to the Secretary of the Interior. Nominations submitted by Tribes and appointed by the Secretary were published and a request for comments was issued. Committee Representation (29 Tribal representative, 13 Federal) consists of small, medium and large Tribes.

On March 16-18, 1999, the first meeting of the Committee was scheduled and held in Albuquerque, NM. In less than 8 months from the full enactment of TEA-21, the Negotiated Rulemaking Committee was fully assembled. Eight meetings have been held in various locations throughout the country. After 8 meetings, the committee has established a new time line for completing the formula and the program regulations by November 2000.

Four workgroups have been established by the Committee to accomplish the task of developing regulations and a funding formula. The workgroups are specifically addressing the funding formula; the technical and construction standards; policy, and delivery of services for the IRR program.

## **CONCLUSION**

The challenges for the future of the IRR program will continue to be our ability to meet the IRR construction and backlog need. The IRR program will need to become a true multi-modal program to address all the needs of Indian Country. In conclusion, Mr. Chairman, I would like to share some success stories of the diversity of the IRR program and its implementation at the tribal level.

## **BIA FORCE ACCOUNT CONSTRUCTION**

A part of the construction work performed includes government force account construction. The

Force Account construction program provides another method of meeting the construction needs for Tribes in the Rocky Mountain Region of the BIA. Indian Reservation Roads funds made available in TEA - 21 have made a substantial impact in improving the transportation systems on reservations in Montana and Wyoming. In addition to constructing roads it employs Tribal members and provides construction skills development to the impacted Tribal governments.

The BIA Rocky Mountain Regional Office's Force Account Construction Program employs approximately 220 individuals and has a biweekly payroll of \$472,270.00. Although this fluctuates some in early spring and late fall, the majority of these employees realize several months of work during the construction season. This employment has had a substantial affect on the local economy at the reservation level and plays a major roll in reducing the general assistance programs there. Additionally, it provides training, individual worker self-esteem and supports their tribal economy.

The BIA Rocky Mountain Region has the only force account paving operation in the BIA and annually paves 40 to 60 miles of road. The asphalt plant this construction season has completed projects on four reservations and has paved or overlayed 46 miles of road. In addition, 27 miles of rural roads, 14 miles of urban streets, 27 miles of curb and gutter, 27 miles of sidewalk and public driveways were constructed.

#### **METLAKATLA ROAD CONSTRUCTION PROJECT**

The Walden Point Road project for the Metlakatla Indian Community of Alaska consists of fourteen miles of roadway and several bridges that will cut across mountainous terrain and link the town of Metlakatla to the proposed ferry terminal point at the northern end of Annette Island. The ferry system is part of the State's Southeast Alaska Transportation Plan, which includes a provision of two new terminal facilities and a ferry boat. The project also includes the relocation of power facilities in conjunction with the road construction.

The completed project will provide economic opportunity to the Metlakatla Indian Community through the prospective sale of power to Southeast Alaska and by improving access to Ketchikan, the nearest port city and a major stopping point for cruise ships. The project is a model of inter-agency cooperation and is jointly operated by the Department of Defense (DOD), Western Federal Lands Highway Division (WFLHD) of the Federal Highway Administration, Metlakatla Indian Community, and the BIA. The Innovative Readiness Training Program under the DOD is providing the heavy equipment and active duty forces for road construction operations. The WFLHD is providing bridge design services for the project, while the BIA has provided the funding for the bridge design services and the work associated with the Archeological and NEPA processes. The funding within the IRR program is not adequate to accomplish this project alone. The participation of the other agencies is an example of the need for continued cooperation among federal agencies in the development of responsive IRR programs.



## **NAVAJO REGION ROADS PROGRAM**

The transportation program at the Navajo Region of the BIA is unique in that it fully utilizes self-determination contracting, Buy-Indian Act contracting and BIA Force Account construction. For the period from 1992 to 1998, the Navajo Region in conjunction with the Navajo Nation utilized Public Law 93-638 in contracting road construction projects. Approximately 40 percent of the total program is contracted by the Navajo Nation, utilizing their construction enterprise and the Navajo Engineering and Construction Authority (NECA). Approximately 26 percent of the program performed under a government force account and the remaining 34 percent was accomplished through the Buy-Indian Act contracting method. The Navajo Region IRR program totals approximately \$60 million annually.

The number of Tribal members employed at the Regional office is about 320 engineering and construction inspection staff. An average of 100 Tribal members are employed annually for the force account operations. Under Buy-Indian Act contracting, approximately 10-20 individuals (generally Tribal) are employed depending upon the size of the projects. All together this represents a total Tribal work force of over 400 members.

## **EASTERN BAND OF CHEROKEE INDIANS HIGH PRIORITY PROJECT**

The Eastern Band of Cherokee Indians (EBIC) have entered into an agreement with the State of North Carolina Department of Transportation to improve US 19 from Cherokee, NC to Maggie Valley, NC. This project was identified as a TEA-21 High Priority Project and is estimated to cost \$18 million. The Tribe is providing the 20 percent local match (\$3 million) along with the TEA-21 authorized \$15 million from the State of North Carolina to perform all the work associated with this improvement, including the widening, realignment and paving of US 19. The project will be phased in over a 4 year period, beginning this year. The EBIC has established a transportation department that is administering this project and is participating with the State of North Carolina in a project that impacts the quality of life of not only Tribal members but the traveling public. This is a tremendous example of the benefits of the flexibility of IRR funding and a Tribal government who has shown it's ability to assume the responsibility for their roads program.

## **RED LAKE BAND OF CHIPPEWA INDIANS SELF GOVERNANCE COMPACT**

As part of the implementation of Title IV of the Indian Self-Determination and Education Act as amended. The Red Lake Band of Chippewa Indians proposed a pilot project to fully utilize self-governance compacting procedures and include their portion of the IRR program within their Annual Funding Agreement in FY 1999. This pilot is part of a comprehensive effort to have Tribal governments manage the effort to improve the condition of roads and bridges serving Indian lands. We recognize that transportation is key to improving the economic infrastructure in any community and that Tribes can reap the economic benefits of managing and performing the work themselves.

The BIA and the FHWA worked with the Red Lake Band of Chippewa Indians to develop a pilot agreement whereby the Tribe will assume the planning, design and construction work on their sections of the 50,000 mile Indian Reservation Road (IRR) system. The agreement will enable the Tribe to manage the \$2.2 million associated with their FY 1999 IRR program.

Thank you for allowing me to share these success stories with you today. I will be happy to answer any questions you may have.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

Honorable Ben Nighthorse Campbell  
Chairman, Committee on Indian Affairs  
United States Senate  
Washington, DC 20510-6450

Dear Mr. Chairman:

I am pleased to provide the responses to the supplemental questions submitted by Vice-Chairman Daniel K. Inouye following the Committee on Indian Affairs' oversight hearing on Indian Reservation Roads (IRR) and the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) held on October 20, 1999.

Should you have any questions, please contact my office at (202) 208-5706.

Sincerely,

Assistant Secretary - Indian Affairs

Enclosure

cc: Daniel K. Inouye  
Vice-Chairman

The Transportation Equity Act set April, 1999, as the deadline for producing new rules for allocating funds through a negotiated Rulemaking with tribes. Obviously, that deadline has passed.

**Question 1:** How much more time do you think it will take to complete the negotiated rulemaking process?

**Answer:** At least one more year. The Committee, which consists of 29 Tribal and 13 federal representatives, recently established a new time line for the completion of the regulatory negotiations. (Attached).

**Question 2:** What, in your view, are the principal obstacles to reaching agreement on new rules?

**Answer:** In my view, the principal potential obstacle to reaching agreement on new rules for the IRR program is the rulemaking committee not reaching consensus on a new funding formula.

**Question 3:** In your view, did the Congress intend that the negotiated rulemaking process for TEA-21 produce a new formula for allocating transportation funds or just make changes in the existing formula?

**Answer:** The legislative history indicates that Congress intended that we develop a new formula, however this does not preclude the modification of the existing formula so long as it meets the statutory criteria.

The law provides that the BIA may use up to 6 percent of its contract authority from the Federal Highway Trust Fund for road program management costs.

**Question 4:** To your knowledge, has the BIA exceeded this 6 percent ceiling for various management purposes?

**Answer:** To my knowledge, the BIA has not exceeded the six percent ceiling for its contract authority. I understand that over the last seven years the BIA has used about 4 to 6 percent.

**Question 5:** Does the BIA transfer any of these "6 percent" management funds to tribes to cover management functions previously performed by BIA. If not, why not?

**Answer:** No. The BIA has not transferred program management functions to the tribes under Public Law 93-638, since these funds are used for non-project program management functions when they are performed by the BIA on behalf of the FHWA. These management functions are not performed by Tribes who take on one or more IRR

projects. Please reference our answer to Chairman Campbell's second question for a list of these functions.

**Question 6:** **If tribes contract to administer more than half of the Indian share of Federal Highway funds, would the BIA still need to use the full 6 percent set aside for program management costs? Why?**

**Answer:** No. The BIA generally uses less than 6 percent, and the balance is used for construction. The BIA must continue to carry out non-project specific management functions on behalf of the FHWA whether the IRR projects are performed under direct service, BIA force account, Buy-Indian Act contracting, self-governance compacting or self-determination contracts.

(ATTACHMENT FOR QUESTIONS SUBMITTED BY THE SENATE COMMITTEE ON  
INDIAN AFFAIRS - Daniel K. Inouye)

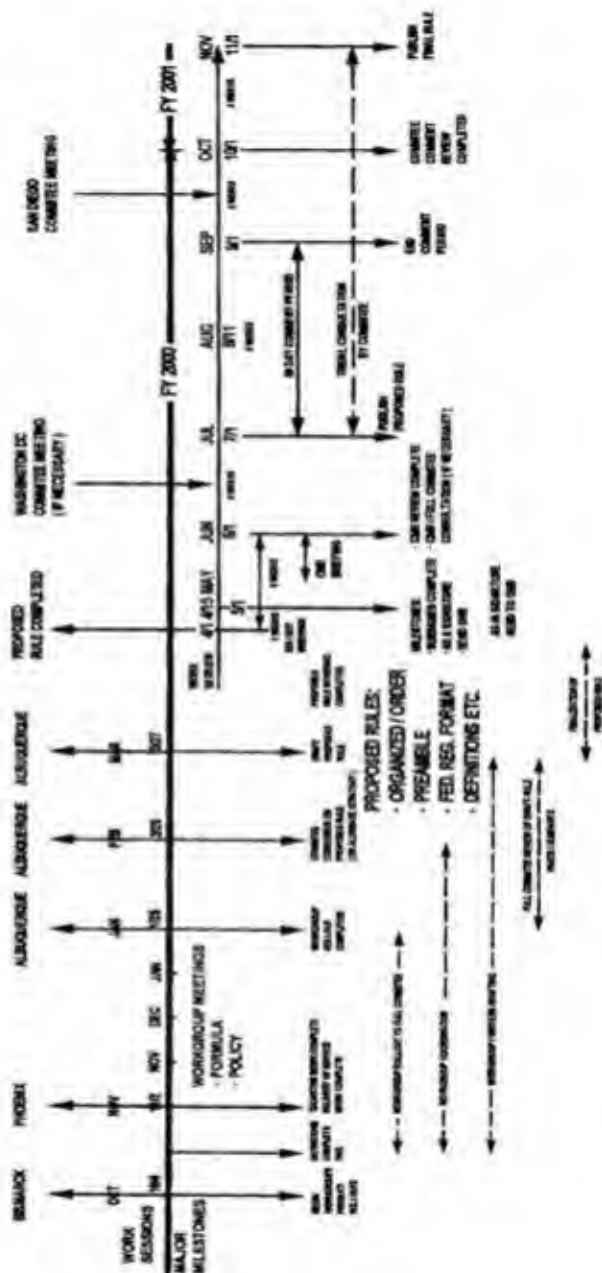
**REVISED COMMITTEE TIMELINE FOR THE COMPLETION OF NEGOTIATED  
RULEMAKING UNDER TEA-21**



# TEA - 21 (REVISED)

## REG-NEG TIMELINE & MAJOR MILESTONES

### GOAL: IMPLEMENT TEA-21 RULE IN FY 2001



(ATTACHMENT FOR QUESTION #2 SUBMITTED BY THE SENATE COMMITTEE ON INDIAN AFFAIRS)

**"IRR PROGRAM MANAGEMENT AND OVERSIGHT"**

## Indian Reservation Roads

### Program Management and Oversight

In 1983 Congress had to decide how to cover the BIA administrative costs of the IRR program. The two options were:

- Use BIA budget funds from the Annual Appropriations for DOI
- Take funds out of the IRR program.

### Program Management and Oversight Language in the Annual DOI Appropriations Act:

"Provided further, That not to exceed 6 percent of contract authority available to the Bureau of Indian Affairs from the Federal Highway Trust Fund may be used to cover the road program management costs of the Bureau, \*

### Program Management and Oversight Language in the Annual DOI Appropriations Act:

This provision allows the Secretary of the Interior to fund his responsibility for administering the IRR program in partnership with the Secretary of Transportation.

The Program Management and Oversight functions are non-project related and include the following:

#### Non-Project Related Functions

- Oversight and program reviews
- Develop and approve requirement
- Approval of Transportation Improvement Programs
- Review and approve the RRR inventory
- Develop and approve design standards
- Maintain the NRD (bridge) database
- Develop procedures for management systems
- Develop and maintain funding formulas and database
- Allocate RRR funding
- Provide TR as requested by Area/Agency/Title
- Coordinate with State, regional and local governments
- Develop/maintain interagency agreements
- Develop control schedules/TIPs

#### Non-Project Related Functions

(Continued)

- Develop/oversee Area Stewardship Agreements (formerly CA Plans)
- Develop Annual Obligation report on program accomplishments
- Develop reports on the project expenditures and performance measures for GPRRA
- Respond to written data for congressional inquiries
- National program leadership for:
  - National State Bypass Program
  - Public Lands Highway's Discretionary Program
  - Transportation Enhancement Program
  - Tribal Technical Assistance Program
  - Recreational Travel and Tourism
  - Transit Program
  - ERFO Program
- Participation in Interstate Transportation Association regional and national meetings

#### Non-Project Related Functions

(Continued)

- Tribal Technical Assistance Program (TTAP) established through ISTEA-81, 88 (entire at \$440,000)
- BIA/Tribal Training development
- Information development
- Special workshops, task forces and meetings as requested by tribal governments (tribal members and Area/Agency personnel)
- Organizational membership in national transportation organizations (NAASHTO, AASHTO, NACOT, TRB)
- Coordinated Technology Improvement Program (CTIP) at Federal Lands Highway programs (\$250,000)
- Consultation with tribal governments on non-project related program issues
- Costs for common services as provided as part of the Area/Agency/CO costs

### **Oversight and program reviews**

- 23 USC 106 (c) ASSUMPTION BY STATES OF RESPONSIBILITIES OF THE SECRETARY.—
- (3) AGREEMENT.—The Secretary and the State shall enter into an agreement relating to the extent to which the State assumes the responsibilities of the Secretary under this subsection.
- Procedures defined in the FHWA/BIA IRR Stewardship Plan, August 1996

### **Develop and approve regulations**

- 23 USC 202(d) INDIAN RESERVATION ROADS — (B) REGULATIONS —Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall issue regulations governing the Indian reservation roads program, and establishing the funding formula for fiscal year 2000 and each subsequent fiscal year under this paragraph, in accordance with a negotiated rulemaking procedure under subchapter III of chapter 5 of title 5. The regulations shall be issued in final form not later than April 1, 1999, and shall take effect not later than October 1, 1999.

### **Develop and approve regulations (cont.)**

- 23 USC 204(f) All appropriations for the construction and improvement of each class of Federal lands highways shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the appropriate Federal land managing agency.

### **Develop and approve regulations (cont.)**

- 23 USC 204 (a)(2) TRANSPORTATION PLANNING PROCEDURES —In consultation with the Secretary of each appropriate Federal land management agency, the Secretary shall develop, by rule, transportation planning procedures that are consistent with the metropolitan and statewide planning processes required under sections 134 and 135.

**Approval of Transportation Improvement Programs**

- **23 USC 204 (a) (3) APPROVAL OF TRANSPORTATION IMPROVEMENT PROGRAM.—**

The transportation improvement program developed as a part of the transportation planning process under this section shall be approved by the Secretary.

**Approval of Transportation Improvement Programs**

- **23 USC 204 (c)** Before approving as a project on an Indian reservation road any project eligible for funds apportioned under section 104 or section 144 of this title in a State, the Secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads, of a fair and equitable share of funds apportioned to such State under section 104 of this title.

**Review and approve the IRR Inventory**

- **23 USC 202 (d) INDIAN RESERVATION ROADS.—**

(1) **FOR FISCAL YEARS ENDING BEFORE OCTOBER 1, 1999**—On October 1 of each fiscal year ending before October 1, 1999, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for Indian reservation roads according to the relative needs of the various reservations as jointly identified by the Secretary and the Secretary of the Interior.

**Develop and approve design standards**

- **23 USC 109 (c) COMPLIANCE WITH STATE LAWS FOR NON-NHS PROJECTS.—**

Projects (other than highway projects on the National Highway System) shall be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.



#### Maintain the NBI (bridge) database

• 23 USC 144 (c) (3) INVENTORY OF INDIAN RESERVATION AND PARK BRIDGES —

As part of the activities carried out under paragraph (1), the Secretary, in consultation with the Secretary of the Interior, shall (A) inventory all those highway bridges on Indian reservation roads and park roads which are bridges over waterways, other topographical barriers, other highways, and railroads, (B) classify them according to serviceability, safety, and essentiality for public use, (C) based on the classification, assign each a priority for replacement or rehabilitation, and (D) determine the cost of replacing each such bridge with a comparable facility or of rehabilitating such bridge.

#### Development of management systems

• 23 USC 204 (a) (6) DEVELOPMENT OF SYSTEMS.—

The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program.

#### Develop and maintain funding formulas and database

• 23 USC 202 (d) INDIAN RESERVATION ROADS.—

(1) FOR FISCAL YEARS ENDING BEFORE OCTOBER 1, 1999.—On October 1 of each fiscal year ending before October 1, 1999, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for Indian reservation roads according to the relative needs of the various reservations as jointly identified by the Secretary and the Secretary of the Interior.

#### Allocate IRR Funding

• 23 USC 202 (d) INDIAN RESERVATION ROADS.—

(1) FOR FISCAL YEARS ENDING BEFORE OCTOBER 1, 1999.—On October 1 of each fiscal year ending before October 1, 1999, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for Indian reservation roads according to the relative needs of the various reservations as jointly identified by the Secretary and the Secretary of the Interior.

**Provide TA as requested by Area/Agency/Tribe**

- PL 93-638 Sec. 105 (m) (2) In providing technical assistance to tribes and tribal organizations in the development of construction contract proposals, the Secretary shall provide, not later than 30 days after receiving a request from a tribe or tribal organization, all information available to the Secretary regarding the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments or environmental impact reports, and archaeological reports

**Provide TA as requested by Area/Agency/Tribe (Cont.)**

- PL 93-638 Sec. 105 (m) (3) Prior to finalizing a construction contract proposal pursuant to section 450(a) of this title, and upon request of the tribe or tribal organization that submits the proposal, the Secretary shall provide for a precontract negotiation phase in the development of a contract proposal. Such phase shall include, at a minimum, the following elements:  
(A) The provision of technical assistance pursuant to section 450h of this title and paragraph (2)

**Coordinate with State, regional and local governments**

- 23 USC 204 (a) (4) **INCLUSION IN OTHER PLANS.**—All regionally significant Federal lands highways program projects—  
(A) shall be developed in cooperation with States and metropolitan planning organizations; and  
(B) shall be included in appropriate Federal lands highways program, State, and metropolitan plans and transportation improvement programs.

**Coordinate with State, regional and local governments (cont.)**

- 23 USC 135 (e) **LONG-RANGE TRANSPORTATION PLAN.**—  
(C) **INDIAN TRIBAL AREAS**—With respect to each area of the State under the jurisdiction of an Indian tribal government, the long-range transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

**Coordinate with State, regional and local governments (Cont.)**

- 23 USC 135 (f) STATE TRANSPORTATION IMPROVEMENT PROGRAM.—
- (ii) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the tribal government and the Secretary of the Interior

**Develop/revise interagency agreements**

- 23 USC 204 (b) . . . In connection with activities under the preceding sentence, the Secretary and the Secretary of the appropriate Federal land management agency may enter into construction contracts and other appropriate contracts with a State or civil subdivision of a State or Indian tribe.

**Develop/approve Area Stewardship Agreements (formerly CA Plans)**

- 23 USC 106 (c) ASSUMPTION BY STATES OF RESPONSIBILITIES OF THE SECRETARY.—
- (3) AGREEMENT.—The Secretary and the State shall enter into an agreement relating to the extent to which the State assumes the responsibilities of the Secretary under this sub-section.

**Develop Annual Obligation report on program accomplishments**

- 5 USC (Government Accounting Standards)
- Government Performance and Results Act
- Annual Deferred Maintenance
- FHWA Annual Report/Highway Statistics
- FLH Annual Accomplishment Report

**Develop reports on the project expenditures and performance measures for GPRA**

- 5 USC (Government Accounting Standards)
- Government Performance and Results Act
- Budgeting

**Respond to/maintain data for congressional inquiries**

- Responsibilities of the Executive Branch
- Committee Report Requests
- Government Accounting Office (GAO)

**National program leadership/liason for:**

- National Scenic Byways Program;
  - Public Lands Highways Discretionary Program;
  - Transportation Enhancement Program;
  - Tribal Technical Assistance Program;
  - Recreational Travel and Tourism;
  - Transit Program;
  - Emergency Relief for Federally Owned Roads (ERFO)
- 23 USC 204 (a) ESTABLISHMENT —  
 (1) IN GENERAL.—Recognizing the need for all Federal roads that are public roads to be treated under uniform policies similar to the policies that apply to Federal-aid highways, there is established a coordinated Federal lands highways program that shall apply to public lands highways, park roads and parkways, and Indian reservation roads and bridges

**Organizational membership in national transportation organizations (ITA, WASHTO, AASHTO, NACE, TRB).**

- 23 USC 204 (a) ESTABLISHMENT —  
 (1) IN GENERAL.—Recognizing the need for all Federal roads that are public roads to be treated under uniform policies similar to the policies that apply to Federal-aid highways, there is established a coordinated Federal lands highways program that shall apply to public lands highways, park roads and parkways, and Indian reservation roads and bridges

**Coordinated Technology Improvement Program (CTIP) all Federal Lands Highway programs (\$250,000)**

- 23 USC 204 (a) ESTABLISHMENT.—  
(1) IN GENERAL.—Recognizing the need for all Federal roads that are public roads to be treated under uniform policies similar to the policies that apply to Federal-aid highways, there is established a coordinated Federal lands highways program that shall apply to public lands highways, park roads and parkways, and Indian reservation roads and bridges

**Participation in Intertribal Transportation Association regional and national meetings**

- April 29, 1994, President Clinton's memorandum entitled, "Government-to-Government Relations with Native American Tribal Governments"
- ITA Townhalls (\$450,000)

**Coordination and participation with tribal organizations.**

- April 29, 1994, President Clinton's memorandum entitled, "Government-to-Government Relations with Native American Tribal Governments"

**Special workgroups, task forces and meetings as requested by tribal governments (tribal members and Area/agency personnel).**

- April 29, 1994, President Clinton's memorandum entitled, "Government-to-Government Relations with Native American Tribal Governments"
- Negotiated Rulemaking (Sec. 1115 TEA-21)
- Organizational Assessment
- National Bridge Program process review

**Consultation with tribal governments on non-project related program issues.**

- April 29, 1994, President Clinton's memorandum entitled, "Government-to-Government Relations with Native American Tribal Governments"
- 23 USC Mandated Management Systems
- 23 USC Transportation Planning Procedures

**Tribal Technical Assistance Program (TTAP) established through ISTEA-91, (7 centers at \$650,000).**

- 23 USC 204 (b) . . . The Secretary of Interior may reserve funds from the Bureau of Indian Affairs' administrative funds associated with the Indian reservation roads program to finance the Indian technical centers authorized under section 504(b).

**BIA and Tribal training development**

- 23 USC 504 (a) (5) **FEDERAL RESPONSIBILITY.**—  
(A) **IN GENERAL.**—Except as provided in subparagraph (B), education and training of employees of Federal, State, and local transportation (including highway) agencies authorized under this subsection may be provided—  
(i) by the Secretary at no cost to the States and local governments if the Secretary determines that provision at no cost is in the public interest; or
- Examples: JRR Bridge Program, Transportation Planning Procedures, Workzone Safety Training, ERFO training, Project Cost Accounting System, Training for new Engineers

**Information development**

- 23 USC 503 (g) **INFRASTRUCTURE INVESTMENT NEEDS REPORT.**—  
(1) **IN GENERAL.**—Not later than January 31, 1999, and January 31 of every second year thereafter, the Secretary shall report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on—  
(A) estimates of the future highway and bridge needs of the United States; and  
(B) the backlog of current highway and bridge needs
- Special Studies (Quality Assurance for Road Inventory)

**Costs for common services as provided as part of the area/agency/CO costs.**

**EXAMPLES INCLUDE**

- Building rent
- Communications and Information Technology
- Office furniture, supplies
- Printing
- Mailing
- Equipment Rental
- Travel and Relocation of New Employees

**Atlas Maps development**

- Transportation planning
- Road Inventory
- Funding Formula
- Coordination with states and local governments
- Base maps for other data (coverages)

**IRR PM&O Funding Distribution**



**CONTRACTIBLE PROJECTS**

(Funding provided through the Central Office, monitored by the Area Offices)

- Bridge Inspection (National Bridge Inventory) (BIA owned bridges)
- Atlas Maps of Roads built with IRR funds
- National Road Inventory Update





## United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

Honorable Ben Nighthorse Campbell  
Chairman, Committee on Indian Affairs  
United States Senate  
Washington, DC 20510-6450

Dear Mr. Chairman:

I am pleased to provide the responses to the supplemental questions submitted by the Senate Committee following the oversight hearing on Indian Reservation Roads (IRR) and the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) held on October 20, 1999.

Should you have any questions, please contact my office at (202) 208-5706.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin J. Hayes", is written over a horizontal line.

Assistant Secretary - Indian Affairs

Enclosure

cc: Daniel K. Inouye  
Vice-Chairman

**Question 1:** For fiscal years 1998 and 1999, please provide the Committee with information that identifies and describes all expenditures of the "up to 6%" Highway Trust Fund money used by the BIA at each Central and Area Office level. While we have gross totals for each office, we need to review a breakdown that identifies and describes all specific expenditures that exceeded a minimum of \$1,000.00.

**Answer:** Since 1983, the Department of the Interior's (DOI) annual Appropriations Act provides language allowing the BIA to use up to 6% of the contract authority received from the Federal Highway Administration highway trust fund (HTF) for their road program management costs.

The intent of this provision today remains the same as in 1983. These funds are for the management and oversight activities associated with non-project functions. Functions such as the management, administration and oversight of the IRR program, development of rules and regulations, the distribution of funds received for 23 U.S.C. programs are some of these costs. Funds to perform these functions are not otherwise provided for the BIA to perform its joint role of administering this program with the FHWA. Examples of non-project functions include:

1. Oversight and program reviews (6 process reviews and 6 product reviews annually)
2. Develop and approve regulations (TEA-21 REGNEG)
3. Approval of Transportation Improvement Programs
4. Review and approve the IRR inventory
5. Develop and approve design standards
6. Maintain the National Bridge Inventory (bridge) database
7. Develop procedures for management systems (BIA Bridge Management System)
8. Develop and maintain funding formulas and database
9. Allocate IRR funding (distribute all highway trust funds received from FHWA)
10. Provide Technical Assistance as requested by Area/Agency/Tribe
11. Coordinate with State, regional and local governments
12. Develop/revise interagency agreements
13. Develop control schedules/Transportation Improvement Programs
14. Develop/approve Area Stewardship Agreements (certification for approval of engineering plans, construction methods)
15. Develop Annual Obligation report on program accomplishments (quarterly/annually)
16. Develop reports on the project expenditures and performance measures for GPRA (annually)
17. Respond to/maintain data for congressional inquiries
18. National program leadership for: National Scenic Byways Program; Public Lands Highways Discretionary Program; Transportation Enhancement Program; Tribal Technical Assistance Program; Recreational Travel and

Tourism; Transit Program ERFO Program (Millennium Trails, Lewis & Clark, Western Tourism Policy Group)

19. Participation in Intertribal Transportation Association regional and national meetings
20. Tribal Technical Assistance Program (TTAP) established through ISTEA-91, (6 centers at \$650,000).
21. BIA/Tribal training development (highway safety training, work zone safety training)
22. Information development (development of information management systems to support consistency in data formats, use, etc. with U.S. DOT)
23. Special workgroups, task forces and meetings as requested by tribal governments (tribal members and Area/agency personnel).
24. Organizational membership in national transportation organizations (WASHTO, AASHTO, NACE, TRB) responsible for highway design & construction standards.
25. Coordinated Technology Improvement Program (CTIP) all Federal Lands Highway programs (\$250,000).
26. Consultation with tribal governments on non-project related program issues.
27. Costs for common services as provided as part of the area/agency/CO costs.

A list of expenditures for fiscal years 1998 and 1999, is attached.

**Question 2: Please identify the functions and activities that were carried out by the BIA in fiscal years 1998 and 1999 with the "up to 6 %" roads funds and indicate which of these specific functions or activities could be assumed by, and the associated funds transferred to, a tribal organization under Public Law 93-638, as amended.**

**Answer:** Since 1983, the annual Department of the Interior Appropriations Act, provides language allowing the BIA to use up to 6 percent of the contract authority received from the Federal Highway Administration's highway trust fund for their road program management costs. This six percent provision allows the Secretary of the Interior to fund his responsibility for administering the IRR program in partnership with the Secretary of Transportation. The "IRR Program Management and Oversight" document attached, describes program management and oversight activities for non-project related functions and, the BIA's use of the "up to six percent" administrative funds.

**Question 3: Is it the Department's position that all of the funds which are transferred to the BIA by the Department of Transportation from the Highway Trust fund are available for tribal contracts or agreements under Public Law 93-638, as amended? If not, please identify which funds are not so available and the Interior Department's rationale for withholding them.**

**Answer:** The Department of the Interior and the Department of Transportation do not take the position that all IRR funds go to the Tribes because the "up to 6%" Program Management and Oversight monies are reserved for non-project related functions. Any unused 6 percent funds are utilized for additional construction activities. For example, over the last seven years, on average, 1/6 of the available administrative funds were used on construction projects.

**Question 4:** Under TEA-21, Indian Reservation Roads funding jumped significantly from around \$200 million per year to \$275 million per year in Fiscal Year 1999. Did the BIA take 6% of the full amount of \$275 million authorized in Fiscal Year 1999? If so, to what specific new and additional activities and functions did the BIA apply these new and additional 6% funds?

**Answer:** No. The "up to 6%" percentage is applied to the amount of Highway Trust Funds allocated by the FHWA, which is the amount after a reduction identified as FHWA administration costs (23 USC Section 104(a)) and the obligation limitation amount imposed by Section 1102(f) of the Act. The 6% is the percentage of the amount of IRR funds that are available from the Federal Highway Administration to the BIA. It should be noted that of the PM&O funds utilized in FY 1999, up to 15 percent of the funds (\$2.0 million) were used to provide tribal participation in the Negotiated Rulemaking process identified in 23 USC 202 (d)(2)(C) and the tribal town hall meetings on the implementation of TEA-21. (See table attached.)

**Question 5:** Has the Federal Highway Administration requested from the BIA a full accounting of the "up to 6%" BIA program management expenditures? If so, what is the status of that request? And has the Federal Highway Administration withheld any fiscal year 1999 or 2000 funding from the BIA in connection with such a request?

**Answer:** The BIA provides an annual program accomplishment report that includes a breakdown of all activities in the program for all expenditures associated with the program to the Federal Highway Administration. Since FY 1996, the BIA has provided a detailed obligation report of all functions associated with the IRR program (program management, preliminary engineering, construction and construction engineering) at mid-year and year-end. In addition, the BIA reports a year-end financial disclosure of all program obligations each year. In FY 2000, the DOI and FHWA jointly requested a detailed budget justification for Program Management.

The FHWA has not withheld any funding in FY 1999 and the BIA does not anticipate that any funds will be withheld in FY 2000.

**Question 6:** I understand that according to the Department's information that in addition to withdrawing the 6% in management funds, the BIA has taken several million additional

dollars for "administrative activities". Why were these various "administrative activities" not included within the "up to 6%" program management activities funding?

**Answer:** As described in Answer #2 above, PM&O funds are used primarily for non-project related non-contractible functions performed by the Secretary. There are project functions which are performed by BIA forces which are chargeable to the various projects. Examples are the planning, survey, design, acquisition of ROWs, environmental compliance, historic preservation compliance, and construction engineering for individual projects. As the functions are contracted by tribes, the need for the BIA to perform these jobs and provide the associated staff will decrease. In FY 1998, approximately fifty percent of the IRR projects/program work was contracted by tribes. The project related functions that are non-contractible include a small portion which are primarily to ensure health and safety standards.

The Project-Related Federally Inherent Functions include:

1. Review of all scopes of work (25 CFR 900.122)
2. Plan-in-hand review (25 CFR 900.122)
3. Approval of Plans Specifications & Cost Estimate (25 CFR 900.122)
4. Approval of Environmental Compliance documents
5. Approval of Archeological Compliance documents
6. Assure compliance with all other applicable federal laws
7. Approval of Right-of-Way
8. Approval of project change orders
9. Assure project compliance with and/or "meet or exceed" federal standards for Construction, FHWA, FP-96 (approved construction standards)
10. Approval of Quality Control Plan
11. Approval of critical construction documents
12. Final inspection and acceptance of projects
13. Quality Assurance

**Question 7:** With more and more tribes utilizing their self-governance authorities and assuming functions previously carried out by BIA, it is unreasonable to expect that the roads program management functions of the BIA should be reduced and the "up to 6%" funds that supported that BIA activity being transferred to tribal organizations pursuant to Public Law 93638, as amended?

**Answer:** Program and project functions that are "otherwise contractible" are available to tribes contracting and/or compacting all or part of the IRR program. It is reasonable to expect more of the management functions to assumed by tribes. It is anticipated, but the number of tribes contracting and/or compacting will not diminish the role of the Secretary in performing those non-project related functions outlined as part of the functions noted in Question #3 and those project related functions associated with assuring health and safety in Question #6. Project related personnel will decrease correspondingly

(ATTACHMENT FOR QUESTION #1 SUBMITTED BY THE SENATE COMMITTEE ON INDIAN AFFAIRS)

**SUMMARY OF COSTS FOR 6% PROGRAM MANAGEMENT & OVERSIGHT OF THE IRR PROGRAM**

[Page 1- 26 SUMMARY of IRR Program Expenditures for FY1998 and FY1999]

[Page 1-27 Detail Expenditures for FY1998 and FY1999]







804207  
804 Summary of Commitments/Programs - 7/31/2008

Output Code	Program of Support/Commitment	Amount
804207	Program Management & Oversight	\$73,200.00
214	Talent Coordination	\$80,000.00
804207	Regulatory Negotiations	\$6,800.00
TOTAL		\$159,900.00
	See Exhibit pages 10	

804207

804 Summary of Commitments/Programs - 7/31/2008

Output Code	Program of Support/Commitment	Amount
804207	Program Management & Oversight	\$6,800.00
214	Talent Coordination	\$70,000.00
TOTAL		\$76,800.00
	See 804207 page 10	
	See Exhibit pages 10	

KAPITOL HALL, LEXIS, NATIONAL OFFICE

Exhibit associated with the 804 Program Management & Oversight of the 804 Program for 2708

Activity	Year	270	280	290	300	310	320	330	340	350	360	370	380	390	400	410	420	430	440	450	460	470	480	490	500	510	520	530	540	550	560	570	580	590	600	610	620	630	640	650	660	670	680	690	700	710	720	730	740	750	760	770	780	790	800	810	820	830	840	850	860	870	880	890	900	910	920	930	940	950	960	970	980	990	1000	1010	1020	1030	1040	1050	1060	1070	1080	1090	1100	1110	1120	1130	1140	1150	1160	1170	1180	1190	1200	1210	1220	1230	1240	1250	1260	1270	1280	1290	1300	1310	1320	1330	1340	1350	1360	1370	1380	1390	1400	1410	1420	1430	1440	1450	1460	1470	1480	1490	1500	1510	1520	1530	1540	1550	1560	1570	1580	1590	1600	1610	1620	1630	1640	1650	1660	1670	1680	1690	1700	1710	1720	1730	1740	1750	1760	1770	1780	1790	1800	1810	1820	1830	1840	1850	1860	1870	1880	1890	1900	1910	1920	1930	1940	1950	1960	1970	1980	1990	2000	2010	2020	2030	2040	2050	2060	2070	2080	2090	2100	2110	2120	2130	2140	2150	2160	2170	2180	2190	2200	2210	2220	2230	2240	2250	2260	2270	2280	2290	2300	2310	2320	2330	2340	2350	2360	2370	2380	2390	2400	2410	2420	2430	2440	2450	2460	2470	2480	2490	2500	2510	2520	2530	2540	2550	2560	2570	2580	2590	2600	2610	2620	2630	2640	2650	2660	2670	2680	2690	2700	2710	2720	2730	2740	2750	2760	2770	2780	2790	2800	2810	2820	2830	2840	2850	2860	2870	2880	2890	2900	2910	2920	2930	2940	2950	2960	2970	2980	2990	3000	3010	3020	3030	3040	3050	3060	3070	3080	3090	3100	3110	3120	3130	3140	3150	3160	3170	3180	3190	3200	3210	3220	3230	3240	3250	3260	3270	3280	3290	3300	3310	3320	3330	3340	3350	3360	3370	3380	3390	3400	3410	3420	3430	3440	3450	3460	3470	3480	3490	3500	3510	3520	3530	3540	3550	3560	3570	3580	3590	3600	3610	3620	3630	3640	3650	3660	3670	3680	3690	3700	3710	3720	3730	3740	3750	3760	3770	3780	3790	3800	3810	3820	3830	3840	3850	3860	3870	3880	3890	3900	3910	3920	3930	3940	3950	3960	3970	3980	3990	4000	4010	4020	4030	4040	4050	4060	4070	4080	4090	4100	4110	4120	4130	4140	4150	4160	4170	4180	4190	4200	4210	4220	4230	4240	4250	4260	4270	4280	4290	4300	4310	4320	4330	4340	4350	4360	4370	4380	4390	4400	4410	4420	4430	4440	4450	4460	4470	4480	4490	4500	4510	4520	4530	4540	4550	4560	4570	4580	4590	4600	4610	4620	4630	4640	4650	4660	4670	4680	4690	4700	4710	4720	4730	4740	4750	4760	4770	4780	4790	4800	4810	4820	4830	4840	4850	4860	4870	4880	4890	4900	4910	4920	4930	4940	4950	4960	4970	4980	4990	5000	5010	5020	5030	5040	5050	5060	5070	5080	5090	5100	5110	5120	5130	5140	5150	5160	5170	5180	5190	5200	5210	5220	5230	5240	5250	5260	5270	5280	5290	5300	5310	5320	5330	5340	5350	5360	5370	5380	5390	5400	5410	5420	5430	5440	5450	5460	5470	5480	5490	5500	5510	5520	5530	5540	5550	5560	5570	5580	5590	5600	5610	5620	5630	5640	5650	5660	5670	5680	5690	5700	5710	5720	5730	5740	5750	5760	5770	5780	5790	5800	5810	5820	5830	5840	5850	5860	5870	5880	5890	5900	5910	5920	5930	5940	5950	5960	5970	5980	5990	6000	6010	6020	6030	6040	6050	6060	6070	6080	6090	6100	6110	6120	6130	6140	6150	6160	6170	6180	6190	6200	6210	6220	6230	6240	6250	6260	6270	6280	6290	6300	6310	6320	6330	6340	6350	6360	6370	6380	6390	6400	6410	6420	6430	6440	6450	6460	6470	6480	6490	6500	6510	6520	6530	6540	6550	6560	6570	6580	6590	6600	6610	6620	6630	6640	6650	6660	6670	6680	6690	6700	6710	6720	6730	6740	6750	6760	6770	6780	6790	6800	6810	6820	6830	6840	6850	6860	6870	6880	6890	6900	6910	6920	6930	6940	6950	6960	6970	6980	6990	7000	7010	7020	7030	7040	7050	7060	7070	7080	7090	7100	7110	7120	7130	7140	7150	7160	7170	7180	7190	7200	7210	7220	7230	7240	7250	7260	7270	7280	7290	7300	7310	7320	7330	7340	7350	7360	7370	7380	7390	7400	7410	7420	7430	7440	7450	7460	7470	7480	7490	7500	7510	7520	7530	7540	7550	7560	7570	7580	7590	7600	7610	7620	7630	7640	7650	7660	7670	7680	7690	7700	7710	7720	7730	7740	7750	7760	7770	7780	7790	7800	7810	7820	7830	7840	7850	7860	7870	7880	7890	7900	7910	7920	7930	7940	7950	7960	7970	7980	7990	8000	8010	8020	8030	8040	8050	8060	8070	8080	8090	8100	8110	8120	8130	8140	8150	8160	8170	8180	8190	8200	8210	8220	8230	8240	8250	8260	8270	8280	8290	8300	8310	8320	8330	8340	8350	8360	8370	8380	8390	8400	8410	8420	8430	8440	8450	8460	8470	8480	8490	8500	8510	8520	8530	8540	8550	8560	8570	8580	8590	8600	8610	8620	8630	8640	8650	8660	8670	8680	8690	8700	8710	8720	8730	8740	8750	8760	8770	8780	8790	8800	8810	8820	8830	8840	8850	8860	8870	8880	8890	8900	8910	8920	8930	8940	8950	8960	8970	8980	8990	9000	9010	9020	9030	9040	9050	9060	9070	9080	9090	9100	9110	9120	9130	9140	9150	9160	9170	9180	9190	9200	9210	9220	9230	9240	9250	9260	9270	9280	9290	9300	9310	9320	9330	9340	9350	9360	9370	9380	9390	9400	9410	9420	9430	9440	9450	9460	9470	9480	9490	9500	9510	9520	9530	9540	9550	9560	9570	9580	9590	9600	9610	9620	9630	9640	9650	9660	9670	9680	9690	9700	9710	9720	9730	9740	9750	9760	9770	9780	9790	9800	9810	9820	9830	9840	9850	9860	9870	9880	9890	9900	9910	9920	9930	9940	9950	9960	9970	9980	9990	10000
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## SOUTHERN CALIFORNIA REGIONAL OFFICE

## 2008 &amp; 2009 Summary of Supplemental Budgets - 2008/09

OBJECT CLASS	Description of Supplement	Amount
<b>FY 2008</b>		
6427 000A	FY & Supplemental Budget Supplemental	10,000.00
<b>FY08 TOTAL</b>		10,000.00
<b>FY 2009</b>		
6427 000A	FY Supplemental Budget Supplemental	11,000.00
<b>FY09 TOTAL</b>		11,000.00
	See Exhibit page 1 of 2	
<b>FY 08 &amp; FY09 TOTAL</b>		21,000.00

## See Exhibit page 1 of 2

## SOUTHERN CALIFORNIA REGIONAL OFFICE

## 2008 &amp; 2009 Summary of Supplemental Budgets - 2008/09

OBJECT CLASS	Description of Supplement	Amount
<b>FY 2008</b>		
6427 000A	Program Management & Oversight	0.00
<b>FY08 Total</b>		0.00
<b>FY 2009</b>		
6427 000A	Program Management & Oversight	0.00
<b>FY09 Total</b>		0.00
<b>FY 08 &amp; FY09 Total</b>		0.00
	See Exhibit page 1 of 2	

## SOUTHERN CALIFORNIA REGIONAL OFFICE

Data associated with the FY Program Management &amp; Oversight of the BIP Program.

Activity	Type	FY08	FY09	FY08/FY09 Change	FY08/FY09
<b>FY08</b>					
<b>Program Schedule</b>					
	Regional Road Engineer	0.00	0.00	0.00	0.00
	Assistant Regional Road En	0.00	0.00	0.00	0.00
	Program Analyst	0.00	0.00	0.00	0.00
	Secretary	0.00	0.00	0.00	0.00
	Procurement Highway Eng	0.00	0.00	0.00	0.00
	Track System	0.00	0.00	0.00	0.00
<b>FY09 Schedule (BIP)</b>					
	Regional Road Engineer	0.00	0.00	0.00	0.00
	Assistant Regional Road En	0.00	0.00	0.00	0.00
	Program Analyst	0.00	0.00	0.00	0.00
	Secretary	0.00	0.00	0.00	0.00
	Procurement Highway Eng	0.00	0.00	0.00	0.00
	Track System	0.00	0.00	0.00	0.00
	Assistant Secretary	0.00	0.00	0.00	0.00
<b>FY09 Schedule (BIP)</b>					
	Regional Road Engineer	0.00	0.00	0.00	0.00
	Assistant Regional Road En	0.00	0.00	0.00	0.00
	Program Analyst	0.00	0.00	0.00	0.00
	Secretary	0.00	0.00	0.00	0.00
	Procurement Highway Eng	0.00	0.00	0.00	0.00
	Track System	0.00	0.00	0.00	0.00
	Assistant Secretary	0.00	0.00	0.00	0.00
<b>FY09 Schedule (BIP)</b>					
	Regional Road Engineer	0.00	0.00	0.00	0.00
	Assistant Regional Road En	0.00	0.00	0.00	0.00
	Program Analyst	0.00	0.00	0.00	0.00
	Secretary	0.00	0.00	0.00	0.00
	Procurement Highway Eng	0.00	0.00	0.00	0.00
	Track System	0.00	0.00	0.00	0.00
	Assistant Secretary	0.00	0.00	0.00	0.00
<b>FY09 Schedule (BIP)</b>					
	Regional Road Engineer	0.00	0.00	0.00	0.00
	Assistant Regional Road En	0.00	0.00	0.00	0.00
	Program Analyst	0.00	0.00	0.00	0.00
	Secretary	0.00	0.00	0.00	0.00
	Procurement Highway Eng	0.00	0.00	0.00	0.00
	Track System	0.00	0.00	0.00	0.00
	Assistant Secretary	0.00	0.00	0.00	0.00
<b>FY09 Schedule (BIP)</b>					
	Regional Road Engineer	0.00	0.00	0.00	0.00
	Assistant Regional Road En	0.00	0.00	0.00	0.00
	Program Analyst	0.00	0.00	0.00	0.00
	Secretary	0.00	0.00	0.00	0.00
	Procurement Highway Eng	0.00	0.00	0.00	0.00
	Track System	0.00	0.00	0.00	0.00
	Assistant Secretary	0.00	0.00	0.00	0.00

[illegible]

**SAATHIYAN (SALVATION) SATHANAL (SPICE)**

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Activity	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	2101	2102	2103	2104	2105	2106	2107	2108	2109	2110	2111	2112	2113	2114	2115	2116	2117	2118	2119	2120	2121	2122	2123	2124	2125	2126	2127	2128	2129	2130	2131	2132	2133	2134	2135	2136	2137	2138	2139	2140	2141	2142	2143	2144	2145	2146	2147	2148	2149	2150	2151	2152	2153	2154	2155	2156	2157	2158	2159	2160	2161	2162	2163	2164	2165	2166	2167	2168	2169	2170	2171	2172	2173	2174	2175	2176	2177	2178	2179	2180	2181	2182	2183	2184	2185	2186	2187	2188	2189	2190	2191	2192	2193	2194	2195	2196	2197	2198	2199	2200	2201	2202	2203	2204	2205	2206	2207	2208	2209	2210	2211	2212	2213	2214	2215	2216	2217	2218	2219	2220	2221	2222	2223	2224	2225	2226	2227	2228	2229	2230	2231	2232	2233	2234	2235	2236	2237	2238	2239	2240	2241	2242	2243	2244	2245	2246	2247	2248	2249	2250	2251	2252	2253	2254	2255	2256	2257	2258	2259	2260	2261	2262	2263	2264	2265	2266	2267	2268	2269	2270	2271	2272	2273	2274	2275	2276	2277	2278	2279	2280	2281	2282	2283	2284	2285	2286	2287	2288	2289	2290	2291	2292	2293	2294	2295	2296	2297	2298	2299	2300	2301	2302	2303	2304	2305	2306	2307	2308	2309	2310	2311	2312	2313	2314	2315	2316	2317	2318	2319	2320	2321	2322	2323	2324	2325	2326	2327	2328	2329	2330	2331	2332	2333	2334	2335	2336	2337	2338	2339	2340	2341	2342	2343	2344	2345	2346	2347	2348	2349	2350	2351	2352	2353	2354	2355	2356	2357	2358	2359	2360	2361	2362	2363	2364	2365	2366	2367	2368	2369	2370	2371	2372	2373	2374	2375	2376	2377	2378	2379	2380	2381	2382	2383	2384	2385	2386	2387	2388	2389	2390	2391	2392	2393	2394	2395	2396	2397	2398	2399	2400	2401	2402	2403	2404	2405	2406	2407	2408	2409	2410	2411	2412	2413	2414	2415	2416	2417	2418	2419	2420	2421	2422	2423	2424	2425	2426	2427	2428	2429	2430	2431	2432	2433	2434	2435	2436	2437	2438	2439	2440	2441	2442	2443	2444	2445	2446	2447	2448	2449	2450	2451	2452	2453	2454	2455	2456	2457	2458	2459	2460	2461	2462	2463	2464	2465	2466	2467	2468	2469	2470	2471	2472	2473	2474	2475	2476	2477	2478	2479	2480	2481	2482	2483	2484	2485	2486	2487	2488	2489	2490	2491	2492	2493	2494	2495	2496	2497	2498	2499	2500	2501	2502	2503	2504	2505	2506	2507	2508	2509	2510	2511	2512	2513	2514	2515	2516	2517	2518	2519	2520	2521	2522	2523	2524	2525	2526	2527	2528	2529	2530	2531	2532	2533	2534	2535	2536	2537	2538	2539	2540	2541	2542	2543	2544	2545	2546	2547	2548	2549	2550	2551	2552	2553	2554	2555	2556	2557	2558	2559	2560	2561	2562	2563	2564	2565	2566	2567	2568	2569	2570	2571	2572	2573	2574	2575	2576	2577	2578	2579	2580	2581	2582	2583	2584	2585	2586	2587	2588	2589	2590	2591	2592	2593	2594	2595	2596	2597	2598	2599	2600	2601	2602	2603	2604	2605	2606	2607	2608	2609	2610	2611	2612	2613	2614	2615	2616	2617	2618	2619	2620	2621	2622	2623	2624	2625	2626	2627	2628	2629	2630	2631	2632	2633	2634	2635	2636	2637	2638	2639	2640	2641	2642	2643	2644	2645	2646	2647	2648	2649	2650	2651	2652	2653	2654	2655	2656	2657	2658	2659	2660	2661	2662	2663	2664	2665	2666	2667	2668	2669	2670	2671	2672	2673	2674	2675	2676	2677	2678	2679	2680	2681	2682	2683	2684	2685	2686	2687	2688	2689	2690	2691	2692	2693	2694	2695	2696	2697	2698	2699	2700	2701	2702	2703	2704	2705	2706	2707	2708	2709	2710	2711	2712	2713	2714	2715	2716	2717	2718	2719	2720	2721	2722	2723	2724	2725	2726	2727	2728	2729	2730	2731	2732	2733	2734	2735	2736	2737	2738	2739	2740	2741	2742	2743	2744	2745	2746	2747	2748	2749	2750	2751	2752	2753	2754	2755	2756	2757	2758	2759	2760	2761	2762	2763	2764	2765	2766	2767	2768	2769	2770	2771	2772	2773	2774	2775	2776	2777	2778	2779	2780	2781	2782	2783	2784	2785	2786	2787	2788	2789	2790	2791	2792	2793	2794	2795	2796	2797	2798	2799	2800	2801	2802	2803	2804	2805	2806	2807	2808	2809	2810	2811	2812	2813	2814	2815	2816	2817	2818	2819	2820	2821	2822	2823	2824	2825	2826	2827	2828	2829	2830	2831	2832	2833	2834	2835	2836	2837	2838	2839	2840	2841	2842	2843	2844	2845	2846	2847	2848	2849	2850	2851	2852	2853	2854	2855	2856	2857	2858	2859	2860	2861	2862	2863	2864	2865	2866	2867	2868	2869	2870	2871	2872	2873	2874	2875	2876	2877	2878	2879	2880	2881	2882	2883	2884	2885	2886	2887	2888	2889	2890	2891	2892	2893	2894	2895	2896	2897	2898	2899	2900	2901	2902	2903	2904	2905	2906	2907	2908	2909	2910	2911	2912	2913	2914	2915	2916	2917	2918	2919	2920	2921	2922	2923	2924	2925	2926	2927	2928	2929	2930	2931	2932	2933	2934	2935	2936	2937	2938	2939	2940	2941	2942	2943	2944	2945	2946	2947	2948	2949	2950	2951	2952	2953	2954	2955	2956	2957	2958	2959	2960	2961	2962	2963	2964	2965	2966	2967	2968	2969	2970	2971	2972	2973	2974	2975	2976	2977	2978	2979	2980	2981	2982	2983	2984	2985	2986	2987	2988	2989	2990	2991	2992	2993	2994	2995	2996	2997	2998	2999	3000
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## SOUTHERN PLAIN REGIONAL OFFICE

2008 &amp; 2009 Summary of Equipment/Equipment = \$2,900.00 for SOUTHERN PLAIN

OBJECT CLASS	Description of Equipment/Equipment	Amount
27 000		
SOUTHERN PLAIN	Program Management & Oversight	
	Phone System Upgrade/CRM Implementation	20,000.00
27 00 Total		20,000.00
27 000		
SOUTHERN PLAIN	Program Management & Oversight	
	Phone System Upgrade/CRM Implementation	20,000.00
	Storage Backup and Disaster Plan	140,000.00
27 00 Total		160,000.00
2700 & 2700 Total		180,000.00
	See Exhibit page 12 of 20	

South Plain page 7 of 20

## SOUTHERN PLAIN REGIONAL OFFICE

2008 &amp; 2009 Summary of Equipment/Equipment = \$1,000.00 for SOUTHERN PLAIN

OBJECT CLASS	Program of Equipment/Equipment	Amount
27 000		
27	Program Management & Oversight	0.00
27 00 Total		0.00
27 000		
27	Program Management & Oversight	10,000.00
27 00 Total		10,000.00
2700 & 2700 Total		10,000.00
	See Exhibit page 12 of 20	





### MAJOR REGIONAL OFFICE

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OBJECT CLASS	Purpose of Significant	Amount
PT 1000		
01	Program Management & Oversight	0.00
PT00 Total		0.00
PT 1000		
01	Program Management & Oversight	0.00
PT 00 Total		0.00
PT00 & PT00 Total		0.00
See Schedule page 14 of 22		

**EXPERIMENTAL PROCEDURES**

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Journal of Internal Medicine 247: 351–358

[illegible]

**SAFETY AND EFFICACY**

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SUBJECT CLASS	Description of Task	Amount
<b>F1 999</b>		
<b>8487</b>	Program Management & Oversight	0.00
<b>F1 99 Total</b>		0.00
<b>F1 999</b>		
<b>8487</b>	Program Management & Oversight	0.00
<b>F1 99 Total</b>		0.00
<b>F199 &amp; F1999 Total</b>		0.00
See Exhibit page 10 of 38		

**Abstract**





## SMART PLANS REGIONAL OFFICE

Summary of 1998-1999 Supplemental Agreements - 11/20/00 for SMART PLANS

OBJECT CLASS	Description of Supplemental	Amount
PT 1998		
20	Program Management & Oversight	
	Phonetic Supplement Local Job Support	\$ 4,100.00
PTSM Total		\$ 4,100.00
21	Program Management & Oversight	
	New Software/Computer Hardware	\$ 40,000.00
	Multi-Media/Graphic Software	\$ 40,000.00
PTSM Total		\$ 80,000.00
PT 1999		
20	Program Management & Oversight	
	Drug Pharmacokinetic Research	\$ 4,800.00
PTSM Total		\$ 4,800.00
21	Program Management & Oversight	
	Software Support/Project/Consulting	\$ 20,713.00
PTSM Total		\$ 20,713.00
PTSM & PTSM Total	See Details page 10 of 30	\$ 75,513.00

## SMART PLANS REGIONAL OFFICE

1998 &amp; 1999 Supplemental Agreements - 11/20/00 for SMART PLANS

OBJECT CLASS	Description of Supplemental	Amount
PT 1998		
20	Program Management & Oversight	
	Workstation/Server/Printer/Peripherals/Net	\$600.00
PTSM Total		\$600.00
PT 1999		
20	Program Management & Oversight	
	Technical Services/Phone Service	\$1,700.00
PTSM Total		\$1,700.00
PTSM & PTSM Total	See Details page 10 of 30	\$2,300.00
See SMART PLANS page 3 line 5		







## SOUTHWEST REGIONAL OFFICE

2008 &amp; 2009 Summary of Travel - \$1,000.00 to \$50

OBJECT CLASS	Description of Travel	Amount
PT 000		
00	Program Management & Oversight	10,000.00
PT00 Total		10,000.00
PT 000		
00	Program Management & Oversight	0
PT00 Total		0
PT00 & PT00 Total		10,000.00
	See Details page 10 of 12	

## SOUTHWEST REGIONAL OFFICE

2008 &amp; 2009 Summary of Professional Services - \$1,000.00 to \$50

OBJECT CLASS	Description of Professional Services	Amount
PT 000		
00	Program Management & Oversight	
	Computer Support Services	10,000.00
00	Program Management & Oversight	
	Computer Software	10,000.00
00	Program Management & Oversight	
	Biological Assessment Studies	10,000.00
00	Program Management & Oversight	
	Office Equipment/Supplies	10,000.00
PT00 Total		10,000.00
PT 000		
00	Program Management & Oversight	
	Computer Support Services	10,000.00
00	Program Management & Oversight	
	Computer Software	10,000.00
00	Program Management & Oversight	
	Biological Assessment Studies	10,000.00
PT00 Total		10,000.00
PT00 & PT00 Total	See Details page 10 of 12	10,000.00

## SOUTHWEST REGIONAL OFFICE

2008 &amp; 2009 Summary of Construction Services - \$1,000.00 to \$50

OBJECT CLASS	Project of Construction Services	Amount
PT 000		
00	Program Management & Oversight	0.00
PT00 Total		0.00
PT 000		
00	Program Management & Oversight	0.00
PT00 Total		0.00
PT00 & PT00 Total		0.00
	See Details page 10 of 12	







## ALABAMA PERSONAL OFFICE

FUND &amp; YEAR Summary of Capitalized Expenditures - FY 2006 for ALP06

UNBUDGET CLASS	Description of Expenditures	Amount
FY 2006		
0001	Program Management & Oversight	
	Computer Equipment/Software	(26,715.00)
FY06 Total		(26,715.00)
FY 2006		
0001	Program Management & Oversight	
	Computer Equipment/Software	0.00
FY06 Total		0.00
FY06 & FY06 Total		(26,715.00)
	See Exhibit page 32 of 32	

## ALABAMA RESEARCH, OFFICE

FUND &amp; YEAR Summary of Capitalized Expenditures - FY 2006 for ALR06

UNBUDGET CLASS	Description of Expenditures	Amount
FY 2006		
00	Program Management & Oversight	
	Construction/Equipment	0.00
FY06 Total		0.00
FY 2006		
00	Program Management & Oversight	
	Construction/Equipment	0.00
FY06 Total		0.00
FY06 & FY06 Total		0.00
	See Exhibit page 32 of 32	









## FINANCES

## 2008 Supply/Engagement - \$1,000,000

DEBENT CLASSE	Description of Supply/Engage	Amount
FF 2008	Program Management & Oversight	
	(a) Supply/Eng	75,077.75
	(b) Technical	90,765.00
	(c) Supply/Eng PM/OT/OT/OT	15,075.00
FF08 Total	See Exhibit page 26 of 27	180,917.75

## FINANCES AREA

## 2008 Summary CONTRACTS - \$1,000 for FF08

DEBENT CLASSE	Description of Contract/Engagement	Amount
FF 2008	Program Management & Oversight	
	(1) Administration/University relations	14,000.00
	(2) Oversight fees	1,000,000
	(3) Project Expenses (PM/OT)	1,000.00
FF08 Total		1,015,000.00
	See Exhibit page 27 of 27	

















## BAGOT

PWA Travel - \$1,000.00 for BAGOT

Original Code	Title	Package	Total Cost
BAGOT			
	Program Management & Oversight		
01	Project Manager	200 Project Manager	2,000.00
02	Project Manager	400 Project Manager	4,000.00
03	Project Manager	600 Project Manager	6,000.00
04	Project Manager	800 Project Manager	8,000.00
05	Project Manager	1,000 Project Manager	10,000.00
06	Project Manager	1,200 Project Manager	12,000.00
07	Project Manager	1,400 Project Manager	14,000.00
08	Project Manager	1,600 Project Manager	16,000.00
09	Project Manager	1,800 Project Manager	18,000.00
10	Project Manager	2,000 Project Manager	20,000.00
11	Project Manager	2,200 Project Manager	22,000.00
12	Project Manager	2,400 Project Manager	24,000.00
13	Project Manager	2,600 Project Manager	26,000.00
14	Project Manager	2,800 Project Manager	28,000.00
15	Project Manager	3,000 Project Manager	30,000.00
16	Project Manager	3,200 Project Manager	32,000.00
17	Project Manager	3,400 Project Manager	34,000.00
18	Project Manager	3,600 Project Manager	36,000.00
19	Project Manager	3,800 Project Manager	38,000.00
20	Project Manager	4,000 Project Manager	40,000.00
21	Project Manager	4,200 Project Manager	42,000.00
22	Project Manager	4,400 Project Manager	44,000.00
23	Project Manager	4,600 Project Manager	46,000.00
24	Project Manager	4,800 Project Manager	48,000.00
25	Project Manager	5,000 Project Manager	50,000.00
26	Project Manager	5,200 Project Manager	52,000.00
27	Project Manager	5,400 Project Manager	54,000.00
28	Project Manager	5,600 Project Manager	56,000.00
29	Project Manager	5,800 Project Manager	58,000.00
30	Project Manager	6,000 Project Manager	60,000.00
31	Project Manager	6,200 Project Manager	62,000.00
32	Project Manager	6,400 Project Manager	64,000.00
33	Project Manager	6,600 Project Manager	66,000.00
34	Project Manager	6,800 Project Manager	68,000.00
35	Project Manager	7,000 Project Manager	70,000.00
36	Project Manager	7,200 Project Manager	72,000.00
37	Project Manager	7,400 Project Manager	74,000.00
38	Project Manager	7,600 Project Manager	76,000.00
39	Project Manager	7,800 Project Manager	78,000.00
40	Project Manager	8,000 Project Manager	80,000.00
41	Project Manager	8,200 Project Manager	82,000.00
42	Project Manager	8,400 Project Manager	84,000.00
43	Project Manager	8,600 Project Manager	86,000.00
44	Project Manager	8,800 Project Manager	88,000.00
45	Project Manager	9,000 Project Manager	90,000.00
46	Project Manager	9,200 Project Manager	92,000.00
47	Project Manager	9,400 Project Manager	94,000.00
48	Project Manager	9,600 Project Manager	96,000.00
49	Project Manager	9,800 Project Manager	98,000.00
50	Project Manager	10,000 Project Manager	100,000.00
51	Project Manager	10,200 Project Manager	102,000.00
52	Project Manager	10,400 Project Manager	104,000.00
53	Project Manager	10,600 Project Manager	106,000.00
54	Project Manager	10,800 Project Manager	108,000.00
55	Project Manager	11,000 Project Manager	110,000.00
56	Project Manager	11,200 Project Manager	112,000.00
57	Project Manager	11,400 Project Manager	114,000.00
58	Project Manager	11,600 Project Manager	116,000.00
59	Project Manager	11,800 Project Manager	118,000.00
60	Project Manager	12,000 Project Manager	120,000.00
61	Project Manager	12,200 Project Manager	122,000.00
62	Project Manager	12,400 Project Manager	124,000.00
63	Project Manager	12,600 Project Manager	126,000.00
64	Project Manager	12,800 Project Manager	128,000.00
65	Project Manager	13,000 Project Manager	130,000.00
66	Project Manager	13,200 Project Manager	132,000.00
67	Project Manager	13,400 Project Manager	134,000.00
68	Project Manager	13,600 Project Manager	136,000.00
69	Project Manager	13,800 Project Manager	138,000.00
70	Project Manager	14,000 Project Manager	140,000.00
71	Project Manager	14,200 Project Manager	142,000.00
72	Project Manager	14,400 Project Manager	144,000.00
73	Project Manager	14,600 Project Manager	146,000.00
74	Project Manager	14,800 Project Manager	148,000.00
75	Project Manager	15,000 Project Manager	150,000.00
76	Project Manager	15,200 Project Manager	152,000.00
77	Project Manager	15,400 Project Manager	154,000.00
78	Project Manager	15,600 Project Manager	156,000.00
79	Project Manager	15,800 Project Manager	158,000.00
80	Project Manager	16,000 Project Manager	160,000.00
81	Project Manager	16,200 Project Manager	162,000.00
82	Project Manager	16,400 Project Manager	164,000.00
83	Project Manager	16,600 Project Manager	166,000.00
84	Project Manager	16,800 Project Manager	168,000.00
85	Project Manager	17,000 Project Manager	170,000.00
86	Project Manager	17,200 Project Manager	172,000.00
87	Project Manager	17,400 Project Manager	174,000.00
88	Project Manager	17,600 Project Manager	176,000.00
89	Project Manager	17,800 Project Manager	178,000.00
90	Project Manager	18,000 Project Manager	180,000.00
91	Project Manager	18,200 Project Manager	182,000.00
92	Project Manager	18,400 Project Manager	184,000.00
93	Project Manager	18,600 Project Manager	186,000.00
94	Project Manager	18,800 Project Manager	188,000.00
95	Project Manager	19,000 Project Manager	190,000.00
96	Project Manager	19,200 Project Manager	192,000.00
97	Project Manager	19,400 Project Manager	194,000.00
98	Project Manager	19,600 Project Manager	196,000.00
99	Project Manager	19,800 Project Manager	198,000.00
100	Project Manager	20,000 Project Manager	200,000.00







## EASTERN OKLAHOMA REGIONAL CENTER

1998 Total = \$4,688.00

ITA Transaction	Title of Transfer	Position of Title	Amount
0000000011	Agency Engineer	Agency Engineer	1,000.00
0000000012	Reg. Road Engineer	Reg. Road Engineer	1,000.00
0000000013	Reg. Road Engineer	Reg. Road Engineer	1,000.00
0000000014	Reg. Road Engineer	Reg. Road Engineer	1,000.00
TOTAL			4,000.00

## EASTERN OKLAHOMA REGIONAL OFFICE

1998 Total = \$1,800.00

ITA Transaction	Title of Transfer	Position of Title	Amount
0000000011	Agency Engineer	Agency Engineer	1,000.00
0000000012	Reg. Road Engineer	Reg. Road Engineer	1,000.00
0000000013	Reg. Road Engineer	Reg. Road Engineer	1,000.00
0000000014	Reg. Road Engineer	Reg. Road Engineer	1,000.00
0000000015	Reg. Road Engineer	Reg. Road Engineer	1,000.00
0000000016	Reg. Road Engineer	Reg. Road Engineer	1,000.00
0000000017	Reg. Road Engineer	Reg. Road Engineer	1,000.00
0000000018	Reg. Road Engineer	Reg. Road Engineer	1,000.00
TOTAL			1,800.00

## EASTERN OKLAHOMA REGIONAL CENTER

1998 Supplies/Equipment = \$1,000.00

ITA Transaction	Description of Supply/Equipment	Amount
0000000011	Supplies/Equipment	1,000.00
0000000012	Supplies/Equipment	1,000.00
0000000013	Supplies/Equipment	1,000.00
0000000014	Supplies/Equipment	1,000.00
0000000015	Supplies/Equipment	1,000.00
0000000016	Supplies/Equipment	1,000.00
0000000017	Supplies/Equipment	1,000.00
0000000018	Supplies/Equipment	1,000.00
0000000019	Supplies/Equipment	1,000.00
0000000020	Supplies/Equipment	1,000.00
TOTAL		10,000.00

## EASTERN OKLAHOMA REGIONAL OFFICE

1998 Supplies/Equipment = \$1,000.00

ITA Transaction	Description of Supply/Equipment	Amount
0000000011	Supplies/Equipment	1,000.00
0000000012	Supplies/Equipment	1,000.00
0000000013	Supplies/Equipment	1,000.00
0000000014	Supplies/Equipment	1,000.00
0000000015	Supplies/Equipment	1,000.00
0000000016	Supplies/Equipment	1,000.00
0000000017	Supplies/Equipment	1,000.00
0000000018	Supplies/Equipment	1,000.00
0000000019	Supplies/Equipment	1,000.00
0000000020	Supplies/Equipment	1,000.00
TOTAL		10,000.00

21,000.00





## PACIFIC REGIONAL OFFICE

1999 &amp; 1994 Supplies/Equipment = \$1,000.00 for PAC

FY Transmittal	Description of Party/Agency	Amount
1999		
1999-0001-01	INDUSTRIAL CABINETS CO.	1,000.00
1999-0001-02	DATA SUPPLY, INC.	1,000.00
Total		2,000.00
1994	OFFICE	0.00

## PACIFIC REGIONAL OFFICE

1999 Travel = \$1,000.00 for PAC

FY Transmittal	Title of Traveler	Particulars of Trip	Amount
1999			
1999-0001-01	JOHN L. HENDERSON	TRIP TO ALABAMA	25.00
1999-0001-02	JOHN L. HENDERSON	TRIP TO ALABAMA	25.00
1999-0001-03	JOHN L. HENDERSON	TRIP TO ALABAMA	25.00
1999-0001-04	JOHN L. HENDERSON	TRIP TO ALABAMA	25.00
Total			100.00
1994	TRIP		0.00

## PACIFIC REGIONAL OFFICE

1999 &amp; 1994 Contract/Agreements = \$1,000.00 for PAC

FY Transmittal	Description of Agreement/Contract	Amount
1999		
1999-0001-01		0.00
1994		0.00

## EASTERN REGIONAL OFFICE

1999 Travel = \$1,000.00

FY Transmittal	Title of Traveler	Particulars of Trip	Amount

## EASTERN REGIONAL OFFICE

## 1998 Supplies/Equipment = \$1,000.00

City Transactions	Description of Supplies/Equipment	Amount
0000000000	Office Supplies	1,000.00
0000000000	Office Supply Project	1,000.00
0000000000	Office Equipment	20,000.00
Total:		22,000.00

## EASTERN REGIONAL OFFICE

## 1998 Contracts/Agreements = \$1,000.00

City Transactions	Description of Agreements/Contracts	Amount

## GREAT PLAINS REGIONAL OFFICE

## 1998 Travel = \$1,000.00

Great Plains Regional Office - FY 98

Great Plains Regional Office - Oklahoma, WI

City Transactions	Title of Traveler	Program of Trip	Amount
001	Area Travel Exp.	00000000	2,000.00
001	Area Travel Exp.	100.00	2,000.00
001	Area Travel Exp.	100.00	2,000.00
001	Area Travel Exp.	100.00	2,000.00
Total:			24,000.00

## GREAT PLAINS REGIONAL OFFICE

## 1998 Travel = \$1,000.00

Great Plains Regional Office - Oklahoma, WI

City Transactions	Title of Traveler	Program of Trip	Amount
001	Area Travel Exp.	000	2,000.00
001	Engineering Tech.	000	2,000.00
001	Engineering Tech.	000	2,000.00
001	Engineering Tech.	000	2,000.00
001	Engineering Tech.	000	2,000.00
001	Secretary (CPL)	Training	2,000.00
001	Secretary (CPL)	Training	2,000.00
001	Secretary (CPL)	Training	2,000.00
001	Secretary (CPL)	Training	2,000.00
Total:			20,000.00









## BIOINVESTMENT REGIONAL OFFICE

Total = \$1,000,000 for 200

FA Transactions	Type of Transaction	Purpose of FA	Amount
10	INVESTMENT IN EQUITY	ACQUISITION OF NEW EQUIPMENT	\$1,000,000
11	INVESTMENT IN EQUITY	ACQUISITION OF NEW EQUIPMENT	\$1,000,000
12	INVESTMENT IN EQUITY	ACQUISITION OF NEW EQUIPMENT	\$1,000,000
		TOTAL	\$3,000,000

## BIOINVESTMENT REGIONAL OFFICE

Total = \$1,000,000 for 200

FA Transactions	Type of Transaction	Purpose of FA	Amount
10	INVESTMENT IN EQUITY	ACQUISITION OF NEW EQUIPMENT	\$1,000,000
11	INVESTMENT IN EQUITY	ACQUISITION OF NEW EQUIPMENT	\$1,000,000
12	INVESTMENT IN EQUITY	ACQUISITION OF NEW EQUIPMENT	\$1,000,000
		TOTAL	\$3,000,000

## BIOINVESTMENT REGIONAL OFFICE

Adjustment = \$1,000,000 for 200

FA Transactions	Description of Adjustment	Amount
10	INVESTMENT IN EQUITY	\$1,000,000
11	INVESTMENT IN EQUITY	\$1,000,000
12	INVESTMENT IN EQUITY	\$1,000,000
13	INVESTMENT IN EQUITY	\$1,000,000
14	INVESTMENT IN EQUITY	\$1,000,000
15	INVESTMENT IN EQUITY	\$1,000,000
16	INVESTMENT IN EQUITY	\$1,000,000
17	INVESTMENT IN EQUITY	\$1,000,000
18	INVESTMENT IN EQUITY	\$1,000,000
19	INVESTMENT IN EQUITY	\$1,000,000
20	INVESTMENT IN EQUITY	\$1,000,000
21	INVESTMENT IN EQUITY	\$1,000,000
22	INVESTMENT IN EQUITY	\$1,000,000
23	INVESTMENT IN EQUITY	\$1,000,000
24	INVESTMENT IN EQUITY	\$1,000,000
25	INVESTMENT IN EQUITY	\$1,000,000
26	INVESTMENT IN EQUITY	\$1,000,000
27	INVESTMENT IN EQUITY	\$1,000,000
28	INVESTMENT IN EQUITY	\$1,000,000
29	INVESTMENT IN EQUITY	\$1,000,000
30	INVESTMENT IN EQUITY	\$1,000,000
31	INVESTMENT IN EQUITY	\$1,000,000
32	INVESTMENT IN EQUITY	\$1,000,000
33	INVESTMENT IN EQUITY	\$1,000,000
34	INVESTMENT IN EQUITY	\$1,000,000
35	INVESTMENT IN EQUITY	\$1,000,000
36	INVESTMENT IN EQUITY	\$1,000,000
37	INVESTMENT IN EQUITY	\$1,000,000
38	INVESTMENT IN EQUITY	\$1,000,000
39	INVESTMENT IN EQUITY	\$1,000,000
40	INVESTMENT IN EQUITY	\$1,000,000
41	INVESTMENT IN EQUITY	\$1,000,000
42	INVESTMENT IN EQUITY	\$1,000,000
43	INVESTMENT IN EQUITY	\$1,000,000
44	INVESTMENT IN EQUITY	\$1,000,000
45	INVESTMENT IN EQUITY	\$1,000,000
46	INVESTMENT IN EQUITY	\$1,000,000
47	INVESTMENT IN EQUITY	\$1,000,000
48	INVESTMENT IN EQUITY	\$1,000,000
49	INVESTMENT IN EQUITY	\$1,000,000
50	INVESTMENT IN EQUITY	\$1,000,000
51	INVESTMENT IN EQUITY	\$1,000,000
52	INVESTMENT IN EQUITY	\$1,000,000
53	INVESTMENT IN EQUITY	\$1,000,000
54	INVESTMENT IN EQUITY	\$1,000,000
55	INVESTMENT IN EQUITY	\$1,000,000
56	INVESTMENT IN EQUITY	\$1,000,000
57	INVESTMENT IN EQUITY	\$1,000,000
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59	INVESTMENT IN EQUITY	\$1,000,000
60	INVESTMENT IN EQUITY	\$1,000,000
61	INVESTMENT IN EQUITY	\$1,000,000
62	INVESTMENT IN EQUITY	\$1,000,000
63	INVESTMENT IN EQUITY	\$1,000,000
64	INVESTMENT IN EQUITY	\$1,000,000
65	INVESTMENT IN EQUITY	\$1,000,000
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75	INVESTMENT IN EQUITY	\$1,000,000
76	INVESTMENT IN EQUITY	\$1,000,000
77	INVESTMENT IN EQUITY	\$1,000,000
78	INVESTMENT IN EQUITY	\$1,000,000
79	INVESTMENT IN EQUITY	\$1,000,000
80	INVESTMENT IN EQUITY	\$1,000,000
81	INVESTMENT IN EQUITY	\$1,000,000
82	INVESTMENT IN EQUITY	\$1,000,000
83	INVESTMENT IN EQUITY	\$1,000,000
84	INVESTMENT IN EQUITY	\$1,000,000
85	INVESTMENT IN EQUITY	\$1,000,000
86	INVESTMENT IN EQUITY	\$1,000,000
87	INVESTMENT IN EQUITY	\$1,000,000
88	INVESTMENT IN EQUITY	\$1,000,000
89	INVESTMENT IN EQUITY	\$1,000,000
90	INVESTMENT IN EQUITY	\$1,000,000
91	INVESTMENT IN EQUITY	\$1,000,000
92	INVESTMENT IN EQUITY	\$1,000,000
93	INVESTMENT IN EQUITY	\$1,000,000
94	INVESTMENT IN EQUITY	\$1,000,000
95	INVESTMENT IN EQUITY	\$1,000,000
96	INVESTMENT IN EQUITY	\$1,000,000
97	INVESTMENT IN EQUITY	\$1,000,000
98	INVESTMENT IN EQUITY	\$1,000,000
99	INVESTMENT IN EQUITY	\$1,000,000
100	INVESTMENT IN EQUITY	\$1,000,000







## MIDWEST REGIONAL OFFICE

Total = \$1,000.00

PSA Transaction	Date of Transaction	Particular of Disb.	Amount
<b>FY98</b>			
act. PMS000000	April, 07	Training	\$1,000.00
act. PMS000001	May, 7	Personal Health Meeting	\$1,000.00
act. PMS000002	May, 8	Training	\$1,000.00
act. PMS000003	May, 9	City, County, Healthcare	\$1,000.00
act. PMS000004	May, 9	City Training	\$1,000.00
		<b>Sub Total</b>	<b>\$5,000.00</b>
<b>TOTAL</b>			<b>\$5,000.00</b>
<b>FY99</b>			
act. PMS000001	September	Healthcare Training	\$1,000.00
act. PMS000002	October, 01	Healthcare Conference	\$1,000.00
act. PMS000003	October, 8	Training	\$1,000.00
act. PMS000004	May, 9	Low Income Health Conf	\$1,000.00
act. PMS000005	May, 9	act. Annualized Review	\$1,000.00
act. PMS000006	October, 8	Health Training	\$1,000.00
act. PMS000007	May, 9	act. Health Care Conf	\$1,000.00
		<b>Sub Total</b>	<b>\$6,000.00</b>
<b>TOTAL</b>			<b>\$6,000.00</b>











TESTIMONY OF  
GOVERNOR MARY V. THOMAS  
ON BEHALF OF THE  
GILA RIVER INDIAN COMMUNITY  
BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS

October 20, 1999

Good Morning, Mr. Chairman and members of the Committee. I would like to thank you for the opportunity to provide testimony on a very important issue - that of Indian Roads and the implementation of TEA-21, the highway bill authorized by the Congress last year.

My name is Mary Thomas and I am currently completing my second term as the Governor of the Gila River Indian Community. The Gila River Indian Community (the "Community") is comprised of both the Akimel O'otham and Pee-Posh nations. Our reservation was created by Executive Order in 1859 and covers 372,000 acres, or approximately 590 square miles in south central Arizona. Our Community is composed of approximately 20,000 enrolled members, 13,000 of whom live within the boundaries of the Gila River Indian Reservation (the "Reservation").

Our Community is in a period of dramatic change. Over the last five years our reservation population has grown by nearly 44%, due in part to the increased economic and employment opportunities on the Reservation for our members. Not only is our

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reservation population growing, but it is also getting younger. Of those members who reside on the Reservation, over 51% are under the age of 21. As the northern boundary of our Reservation forms the southern boundary of the Phoenix metropolitan area, our Community has experienced tremendous growth that mirrors that of Phoenix. As a result, there has been a great urgency to keep pace with the growing infrastructure demands within our Community.

Unfortunately, there remains a significant amount of work to be done in order to meet these growing demands. For example, of the 457 miles of road within the Reservation, only 256 miles are paved. The remaining 200 miles are largely unpaved, dirt roads. Given the rapid population growth and increased traffic activity throughout the Reservation (due to the close proximity of the Phoenix metropolitan area) our Community urges the Congress and the Administration to jointly work on the expeditious implementation of the TEA-21 legislation. We believe that the funding formulas of TEA-21 will help address the growing backlog of reservation roads construction needs.

Mr. Chairman, I would like to focus my remarks on the following areas:

1. Problems experienced by our Community in the current allocation of funds by the BIA for Indian Reservation Roads
2. Expanded Self-Determination Contracting and Self-Governance Compacting Opportunities for Indian Tribes under TEA-21
3. Expeditious Implementation of TEA-21
4. Overall funding of the IRR program

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Problems experienced by our Community in the current allocation of funds by the BIA for Indian Reservation Roads

Mr. Chairman, you are aware how, for several years, our Community has been deeply concerned with the current funding distribution mechanism utilized by the BIA, specifically the BIA Phoenix Area Office, for identifying and funding tribal road projects. Prior to enactment of TEA-21, the law under the Intermodal Surface Transportation Efficiency Act (the "ISTEA") mandated that the BIA allocate funding based on a Relative Need Formula (the "RNF"). The purpose of utilizing the RNF formula was to protect smaller tribes while at the same time providing certainty to other tribes that they would receive a certain level of funding each year. Unfortunately, it has been the Community's experience that, contrary to clear Congressional intent, the BIA Phoenix Area Office has applied its own "arbitrary" flat percentage formula. As a result, our Community's road projects have been underfunded by approximately \$2.5 million for the period of 1992-1997.

In uncovering this "funding shortfall", our Community requested an audit by the Federal Highway Administration (the "FHA") of the BIA Phoenix Area Office to determine the reasons for annual funding discrepancies in the Phoenix Area. The FHA audit revealed that the Phoenix Area Office never fully implemented the RNF funding formula as dictated by ISTEA. Rather, they have been utilizing a "Fair Share" formula to track the annual aggregate amount of funding for each Indian tribe in the Phoenix Area. The FHA Audit report found that the Phoenix Area Office had not changed its allocation methodology since 1983. Each Indian tribe in the Phoenix Area received that same flat percentage of roads funding for the last sixteen years! It has been only in the last year that the Phoenix Area Office updated its base statistics for each Indian tribe (ie., population growth since 1983, reservation roads constructed since 1983, increased land base, etc.).

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Mr. Chairman, we cannot wait another sixteen years before the allocation formula of TEA-21 is implemented in the Phoenix Area.

Moreover, although the Phoenix Area Office purported to allocate roads funding pursuant to its "Fair Share" formula, in practice the Area Roads Engineer has exercised absolute discretion in which tribal projects get built and which projects do not. In establishing his priorities, the roads engineer is able to reallocate reservation roads monies among the Phoenix Area Indian tribes regardless of the "Fair Share" formula and thereby "rob Peter to pay Paul." This practice not only resulted in our Community being underfunded by approximately \$2.5 million, but more importantly, it seriously undermines the ability of tribal governments to plan for future reservation roads needs.

Given the long hours of Congressional debate and deliberation that went into crafting the formulas to allocate funds among the 50 states and Indian tribes under ISTEA and TEA-21, it is inconceivable that the Phoenix Area Office can continue to ignore these formulas and leave funding allocations to the unbridled discretion of its roads engineer. Yet when our Community raised its concerns with the Phoenix Area Office, the response we received from the Area Office stated that "there can be no rigid allocation of construction monies" due to the cost of roads projects, and when asked to justify their actions, they responded that funding is, "spread out over the years and averaged,...all tribes are treated fairly."

The FHIA Audit Report also identifies other problem areas:

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- The Area Office does not provide adequate enforcement of quality assurance and quality control on road construction projects due to lack of qualified BIA staff at the construction site.
- The transportation planning function is being carried out in a fragmented and inefficient manner by the BIA Phoenix Area Office due to a lack of organization, staffing and disjointed allocation of planning responsibilities.
- Phoenix Area Office personnel do not provide Technical Assistance to the Phoenix Area tribal governments.
- Phoenix Area Office fails to communicate with Phoenix Area tribal governments which creates serious misunderstandings about the IRR program.
- The current Area office Certification Acceptance Plan is outdated and is not functioning according to the requirements of TEA-21.

The FHA Audit Report highlighted several problem areas within the Phoenix Area Office Roads Program that in our experience have resulted in the continued deterioration of reservation roads throughout the Phoenix Area. For example, the Phoenix Area Roads Engineer does not regularly communicate with the Phoenix Area tribal governments. In fact, the Area Roads Engineer notified the Phoenix Area tribal governments only once a year regarding the amount of roads funds appropriated that year. The Phoenix Area Office has done little to assist tribal governments in planning for future reservation roads needs and to complete an area wide roads inventory. In 1992, our Community provided the Phoenix Area Office with a resolution that described the Community's road construction priorities for the next five (5) years. The BIA Phoenix Area Office has yet to complete these projects.



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Finally, despite the overwhelming backlog of road construction needs in the Phoenix Area, last year the Phoenix Area Office advised the Community that it was returning to BIA Headquarters the unallocated amount of \$12 million. Money that could have been efficiently spent for construction projects! We are expecting similar news this year.

Expanded Self-Determination Contracting and Self-Governance Compacting  
Opportunities for Indian Tribes under TEA-21

Mr. Chairman, the days of the Indian Agent are long over. The universally accepted Federal policies of Indian Self-Determination and Self-Governance require each Indian tribal government to be able to wrest control from these mid-level bureaucrats and *directly* administer these programs for the benefit of their members.

Our Community has four (4) Title I contracts and one (1) Title IV compact under the Indian Self-Determination and Education Assistance Act (the "ISDEA"). Three of the Title I contracts are with the Indian Health Service for Hospital, Public Health, and Sub Part J (Code of Federal Regulations) construction services. One Title I contract is with the Bureau of Indian Affairs for Law Enforcement Services. The Title IV compact is with the Bureau of Reclamation for the Central Arizona Project, Indian Distribution Division services. The Community is a "mature contractor" having continuously operated 638 contracts for three or more years with no significant audit exceptions. As a mature contractor, the Community would qualify as an applicant for a compact under Title IV.

Given our experience with Phoenix Area Office Roads Program, we are extremely interested in compacting the programs, functions, services, and activities associated with Indian Reservation Roads. In our view, compacting reduces agency interference and

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administrative costs imposed by the agency. It is critical that the Indian Reservation Roads Program maintain a formula funding allocation based on clear and objective criteria and that incorporates the most current data about each respective reservation.

To suggest that reservation roads funding be provided as nothing more than a simple estimate so that the Area Roads Engineer can recall or reallocate these monies to other tribes upon his discretion is folly. Just like each of the 50 States, funding for Indian tribal governments should be based on clear and objective criteria and should be available directly to the tribal governments under 638 contracts or compacts. Any formula allocation should necessarily be assumed to be the allocation for a tribal government, dollar-for-dollar. By providing a firm allocation of funds (i.e., not subject to alteration by the Area Office), each tribal government would be able to plan future road construction and more importantly, to rely on a predictable allocation methodology to schedule multi-year roads construction projects.

Given our history of dealing with the Phoenix Area Office, the Community would prefer to compact, or even contract, directly with the Federal Highway Administration (FHA) for Indian Reservation Roads funds. Not only does this comport with the spirit of Indian Self-Determination but it is consistent with the idea that the Federal government's trust responsibility flows to all departments and agencies in the government not just the BIA. Further, by contracting directly with FHA Indian tribal governments would reap the benefits of eliminating suffocating layers of BIA bureaucracy and "red tape." Not only do Indian tribes feel the administrative "bite" at BIA Headquarters but the Area and Agency offices also take their share of administrative costs out of tribal roads monies. By contracting with FHA directly, Indian tribal governments would maximize the amount of Indian roads funding that actually reaches the reservation.

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Expeditious Implementation of TEA-21

Finally, it is our understanding that the Negotiated Rulemaking Committee established under TEA-21 will take yet another two years to promulgate a final rule implementing TEA-21. The original statute required the negotiated rulemaking to be completed by April 1999. The Committee did not meet until March of 1999.

Mr. Chairman, our Community cannot wait through another two years of BIA foot-dragging to be able to take direct control of our roads programs and begin to address our growing backlog of need. For that reason, our Community is pursuing efforts to be included in the Indian Roads Demonstration Program that would allow the Community to receive its roads funding allocation directly. Unfortunately, the BIA is currently limiting participation in this Demonstration Program to Indian tribes with existing self-governance compacts.

Therefore, I would like to make the following recommendations to this Committee:

- Mandate that the BIA eliminate the authority of the Area Roads Engineer to reallocate funds among Area tribal governments without the notice and consent of the affected tribal government.
- Require the BIA Area Offices to provide an accurate accounting of prior years' Indian Reservation Roads funding distributions.
- Direct the BIA to regularly (annually) update any statistics used in the Indian Reservation Roads funding formula.
- Mandate that the BIA ensure that each Area Office expeditiously implements (during that same funding year) the RNF formula or the funding formula developed under TEA-21.

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Direct the BIA to conduct a national Indian Reservation Roads Inventory.

Overall Funding of the IRR Program

Finally Mr. Chairman, I was delighted to read that the President signed into law the transportation appropriation bill for FY 2000. As you know under TEA-21, the IRR program is authorized at \$275 million through FY 2003. I would like to express my appreciation to yourself and the other members of this Committee who supported full funding for the IRR program. In addressing the overwhelming need for better roads, Senator Domenici summarized it best when he outlined that state of Indian Roads in New Mexico. He indicated that of the nearly 22,000 miles of BIA roads that serve tribal lands, only 11% of those are paved roads and nearly 90% are unimproved roads. In my view, there could not be a better reason to continue to advocate full funding for TEA-21 in the coming years.

In conclusion, Mr. Chairman, I would like to thank you for conducting this timely hearing on this very important issue. Our Community has high hopes that under the watchful eye of this Committee, tribal governments will be able to rollback the many years of neglect and fully realize Indian country's vision for the future by ensuring that safe and well-maintained roads do not end at the reservation boundary.

**TESTIMONY OF**  
**LORETTA BULLARD, PRESIDENT OF KAWERAK, INC.**  
**BEFORE THE**  
**SENATE COMMITTEE ON INDIAN AFFAIRS**  
**OVERSIGHT HEARING ON INDIAN RESERVATION ROADS**  
**OCTOBER 20, 1999**

Thank you, Chairman Campbell, and committee members, for the opportunity to testify today. My name is Loretta Bullard, and I am President of Kawerak, Inc., which is a consortium of 20 federally recognized tribal governments in northwestern Alaska. I am one of Alaska's tribal representatives on the national negotiated rule-making committee on Indian Reservation Roads, and I have attended most of the meetings since they began in March.

I would like to preface my remarks by stating the obvious: the IRR program is badly under-funded, nationally. That is the one funding issue that all tribal representatives to the negotiated rule-making agree upon. My understanding is that the total construction need which the BIA uses to calculate IRR allocations is in the \$6 to \$7 billion dollar range. That means it would take 25 years at current funding levels to even meet today's need.

When TEA-21 increased IRR appropriations, we in Alaska certainly expected an increase of funding. Although Alaska's IRR funding did go up from 1997 to 1998, this was primarily due to BIA's Central Office accepting new construction cost figures for Alaska. Our funding actually went down, substantially, in 1999. IRR funding in TEA-21 did not keep up, on a percentage basis, with the increase enjoyed by the states. Because \$13 million in reservation bridges money was taken out of IRR construction funding and the obligation limitation was applied to IRR funding for the first time, TEA-21 took away much of its own increase to the IRR program. The obligation limitation reduced IRR construction funds by about \$31 million in 1999. Kawerak strongly supports requests made by NCAI, and others, that Congress fund the IRR program at 100%.

The Existing "Relative Need" Formula

My main point today, however, is that the method used by the BIA to distribute IRR funds among the BIA Areas is grossly unfair, and in need of change. The "relative need" formula is illogical, it does not fairly or accurately measure tribal needs, and it is contrary to the authorizing legislation for the program. It effectively excludes the *majority* of eligible Indian reservations and Alaska Native communities from meaningful participation. The formula reflects a policy decision made by the Bureau in the early 1990's that the highest and best use of IRR funds is to rebuild and rehabilitate existing BIA-owned roads. It intentionally tracks 80% of funding, every year, to those tribes and BIA regions that had BIA roads constructed in the past.

There are three numeric factors in the formula: 50% of the funding is allocated based on "cost to improve," which is a measure of construction costs; 30% is allocated by "vehicle miles traveled," which is a measure of vehicle use of a given road segment, and 20% is allocated by population.

Superficially, that may seem to make sense. However, both the cost to improve and vehicle-miles factors are based on a road inventory which is limited to existing roads the BIA itself owns, or controls the right-of-way for. (There are exceptions for Alaska and for Oklahoma, which I'll get to in a moment.) But in general, tribes with no BIA roads at all are excluded from 80% of the funding, regardless of their need for new roads or to upgrade tribally-owned roads. In contrast, the law, at Section 101 of Title 23, includes all public roads which serve or provide access to reservations or Alaska Native communities in the definition of Indian Reservation Roads.

To illustrate the problem, imagine two tribes or Native communities of the same size, both of which need access to identical new housing sites 5 miles away from their population centers. Tribe A already has a BIA-owned gravel road that runs past its new housing site. Tribe B has no access road to its site at all. Logically, I suggest that Tribe B has the greatest need for road construction funds, since they have no road at all. However, the BIA's relative need formula assigns Tribe A funds for its road every year, because the road is in the BIA system. Tribe B, which has no road at all, receives zero from the 80% of the formula driven by inventory. Both tribes will share in the 20% of the formula based on population, but that is all Tribe B receives.

The Bureau has turned the IRR construction program into a deferred maintenance and rebuilding program for its own roads, even though the definition of "Indian Reservation Roads" is much broader. IRR money is not supposed to be maintenance money at all; BIA roads maintenance funding is appropriated separately to the Department of the Interior. The formula simply does not recognize that the BIA's needs and the needs of tribes are not the same thing. Many reservation tribes have tribally owned roads that are not in the system.

Alaska is treated somewhat differently in the formula than other areas. Congress used appropriations acts in 1993 and 1994 to require that projects in the BIA's Juneau Area Transportation Plan be counted in the national BIA road inventory for funding purposes. This was later extended by administrative policy. This had the effect of counting about 1000 miles of proposed roads in Alaska in the national inventory. Without this exception, even at TEA-21 funding levels Alaska would only receive \$2 or \$3 million at most. An exception was also made for Oklahoma tribes, to include former reservation roads in the inventory.

Although we greatly appreciate the Alaska exception, it is not a good substitute for having a fair formula to begin with. Juneau has never had the funds to do necessary transportation planning in 227 communities. The Area Plan merely skims the surface, and reflects only the very top priorities of the villages at the time the plan was done. As the members of this Committee know, Alaska's rural villages are starting from almost a zero infrastructure base for ground transportation. Virtually any development we do requires some road construction. We do not have county governments, our local

municipal governments where they exist have virtually no tax base, and the state DOT disavows any responsibility for road construction within our villages.

One of the unfortunate side effects of the BIA's system is that true *tribal* road construction needs are never recorded or requested of Congress, and neither are the true roads maintenance needs for BIA-owned roads. The relative need formula enables the BIA to sidestep its obligation to request adequate maintenance funds for its own roads.

There are other problems with the relative need formula, and its underlying data:

- \* Cost-to-improve figures are derived from the BIA's own construction costs, as reported by the Area Offices, which means there is no incentive to be cost efficient. The more the BIA or a tribal contractor spends on a road project, the more funding it will receive in the future.

- \* The BIA road inventory system and allocation system is excessively complex. According to information provided at the Neg-reg, each segment of IRR road is supposed to have a data sheet with 55 fields of information filled out by the tribe or the Bureau. This should be redone every year for the inventory to stay current. In theory, once a road is built up to FHWA standards it is supposed to drop from the inventory for funding purposes, but that rarely happens. The inventory was never completed in all areas, and there is enormous variation among the areas in how this information is collected and managed.

Although I cannot speak for other regions, the Bureau in Alaska simply does not have the resources to maintain this complex of a system for 227 tribes.

- \* The data system is outmoded and, in my view, unreliable and completely unverifiable by anyone outside the Bureau. When the BIA reported on the system to the Neg-reg this summer, the data was being maintained on antiquated computer equipment that used a Cobol operating system. It was not Y2K compliant. We were told that to verify the data, we would have to physically go to Albuquerque to watch them run the numbers. In this day and age, all of this data should be available electronically and computations should be replicable on any laptop. All they have provided committee members is hard copies.

- \* The range of projects which are eligible for spending at the local level is much broader than the road inventory which drives funding to the local level. This means tribes or local BIA offices can spend money on projects which are not in the BIA road inventory, and thus prevent their need from going down. In fact, if they build a new road, their funding will go up because that road will eventually be added to the inventory for improvements. I have been told that some reservations have many miles of unimproved dirt or gravel roads that stay in the inventory for funding purposes forever, because the local priority is to never upgrade those particular roads.

- \* One of the ironies in Alaska is that because of the lack of maintenance funds, the Bureau normally requires the state or a municipality to take the right-of-way and

maintenance responsibility of a new BIA road. This means our new roads don't get into the system.

\* Another particular Alaska problem has to do with the use of FHWA cost indices. The Bureau applies FHWA cost indices as a corrective factor on cost-to-improve, to correct for inflation or deflation. The index is derived from data provided by the states, and assigns a percentage value for various construction costs in geographic sub-regions. 1987 costs are the base. In 1997, for some reason there was no new FHWA data in Alaska for certain of the key construction cost components, such as gravel and paving. This 1997 FHWA index was used by the Bureau to "correct" the 1999 relative need distribution. Rather than simply revert to the prior year's data, the Bureau applied an arbitrary "default factor" to Alaska's construction costs, which as I understand it was 93% of 1987 costs.

Alaska's relative need share dropped about 33% or \$7 million from 1998 to 1999.

\* The funding formula does not fund all the functions that have to be performed. As a practical matter, any tribe which wishes to fully participate in the IRR program has to do transportation planning, develop its inventory, and in general acquire a fairly sophisticated understanding of the program. Tribes with transportation departments are able to access the system much better than those without. These functions are just not funded for small tribes. Although 2% planning funding is available, a BIA Area's 2% funding depends on how much construction money it is receiving.

In Alaska, the per tribe share of 2% money is about \$1,300 – not enough to do much of anything. Some Alaskan tribes spent their entire 1999 2% planning amount sending one person to observe the August Neg-reg meeting in Anchorage. This lack of funding for basic administrative capacity, by itself, effectively locks small tribes out of the program.

I will note in passing that Section 204 of Title 23 imposes some mandatory functions on all Federal Lands Highways programs, such as developing safety and other management systems, which are not funded by the BIA's relative need formula.

\* The BIA formula focuses on roads to the exclusion of other uses of IRR funds. At least since TEA-21 was enacted, the IRR program is not just for roads. Transit systems are specifically authorized in Section 204(b). The section in the law which required a new formula to be negotiated for FY 2000 says that the formula is to reflect the "relative needs of the Indian tribes ... for transportation assistance." It is not just a program for upgrading BIA-owned roads.

As a practical matter, in Alaska many of our ground transportation needs are for relatively small scale projects such as boardwalks, winter trail staking, improved trails or single lane roads. Although we can build some of these kinds of projects, they do not drive funding in the inventory.

Because of the BIA's funding formula, the majority of tribes in the United States are effectively outside the program. Some of the tribal support staff at the Neg-reg did their own research and estimated that about 350 of the 556 recognized tribes nationally



did not receive any IRR construction projects at all during the entire ISTEA authorization period. Some of these tribes may have received planning projects from construction funds, but no construction projects.

This is not a precise count, as it was based on interviews of BIA staff, but I don't believe it is far wrong. In Alaska alone, about 200 tribes were not served during ISTEA - I doubt that more than 25 or 30 projects were built, and we have 227 tribes. In Kawerak's region, to the best of our knowledge only 6 of our 20 tribes have ever had an IRR construction project. That is actually a high percentage compared to some other Alaska regions.

The 1999 relative need distribution data provided by the Bureau shows that 155 tribes nationally are allocated "zero" from the cost-to-improve part of the formula, which means that they have no roads in the inventory. These tribes are only attributed funding based on population. Alaska has 55 of these zero inventory tribes. I can assure you that these tribes, or most of them, have very real transportation needs. Sixteen additional Alaskan tribes - including one in Kawerak's region - are missing from the data altogether. I guess they don't even rate a zero. Another 70 Alaska tribes are credited with cost-to-improve funds, but not with vehicle miles traveled. Alaska is the only Area in which this occurs.

Another 48 "zero-inventory" tribes are in California, and 18 are in the Portland Area - almost half of Portland's tribes. Eleven are in the Eastern Area, and others are scattered around the country.

Alaska received \$16.6 million in IRR funds in 1999. It has 227 tribes spread out over a land area 1/5<sup>th</sup> the size of the Lower 48, a relevant service population of 60,000, and extremely high construction costs. The Billings Area, with 7 tribes, 42,000 people, and - I suspect - much lower construction costs, received just under \$17 million. The lowest relative need share for any Billings Area tribe is \$1.385 million, and only 2 of the 7 Billings tribes receive less than \$2 million. None of Alaska's tribes is attributed even \$1 million, and only one tribe is close to that amount. Four-fifths of Alaska's tribes are attributed less than \$100,000, and there are many whose relative need share is only a few thousands or even hundreds of dollars.

Navajo, by itself, received \$59 million, and several million more in bridge money.

I am not at all suggesting that Navajo or Billings do not have great needs, or that they or any other tribes are over-funded in any absolute sense. The entire IRR program is under-funded. But the distribution is clearly skewed against those tribes which do not already have BIA road infrastructure.

To illustrate the point, one of the minor debates in the formula workgroup at the Neg-reg was whether IRR funds could or should be used for the streets in HUD-funded housing projects. HUD normally funds street construction, but it does not ordinarily fund the access roads to the housing project. Apparently some tribes use IRR funds not only to build the access roads, but to build or reconstruct the streets. In Alaska, IRR funds are not available even for the access roads. These projects are IRR eligible, but there is no funding. New access roads are often needed for our village housing projects, and are built by the local housing authority out of funds that would otherwise be used to build

houses. Something is fundamentally wrong with a funding allocation that enables some tribes to fund both kinds of projects with IRR funds, but for other tribes funds neither.

#### The Negotiated Rule-Making Process

I had thought that the negotiated rule-making would be an opportunity for tribes nationally to develop a new formula, taking into account the needs of the various regions and tribes, and following the criteria set forth in TEA-21. The relative need formula was adopted even before ISTEA, and common sense might suggest that after two transportation acts it would need to be revised. The shift of emphasis toward "transportation assistance" in TEA-21, and the specific criteria listed in the statute such as "relative administrative capacities," geographic isolation, and so forth indicated to the Alaska delegates quite clearly that Congress intended a new formula to be developed.

That is not the Bureau's understanding. To be blunt, the formula part of the negotiated rule-making has broken down. This is largely because of Bureau obstruction to any suggestion of change.

It took the Bureau nine months from the enactment of TEA-21 to even convene the first Neg-reg meeting. Protocols to govern the process were approved by the full committee, including the federal representatives, after the second meeting, but it took three more months for the Interior Department to approve the document. Even then, the authority of the federal negotiators was watered down – the clear message was that any final work product of the committee would still be subject to multiple layers of review by the agency. There is only one Area Director on the committee, Robert Baraker, and he and Mr. Gishi, the Chief of BIADOT, are the highest ranking BIA officials present. There are at least three Area Road Engineers. Conspicuously absent is the Office of Self-Governance, despite numerous requests by tribes that someone from OSG be appointed to the Committee. OSG staff attend the meetings, but they are not on the committee.

Very early the tone was set that there is little interest in the Neg-reg at the highest policy levels of the Bureau, and even less interest in changing the way the Bureau does business. Assistant Secretary Gover has not attended a single meeting.

Although the negotiations regarding program regulations seem to be going pretty well, the funding formula discussion is going nowhere. Some of the problems, as I see them, are as follows:

\* Not once since the beginning of the Neg-reg have any of the senior BIA officials defined the process as requiring a new formula to be negotiated. The most that the senior BIA officials have said is that the need for a new formula is for the committee to decide. This lack of coherent BIA policy direction leaves the individual BIA representatives on the committee free to oppose any change.

\* No alternatives to the present funding formula have been developed or presented by any Bureau officials, but Bureau delegates on the funding workgroup have vigorously opposed changes suggested by tribal representatives. Bureau staff severely criticized one of the FHWA representatives for merely presenting alternatives to the formula. In my view this is exactly what FHWA and Bureau representatives should be doing if they are going to participate in the formula discussions.

\* The Bureau did not come to the first Neg-reg meetings with any national funding information or the underlying data which drives the formula. Although the Program Management Office did eventually make this material available, tribal representatives had to ask individually for their own copies. Some Bureau representatives in the funding workgroup argued seriously that the workgroup should not even look at funding information or inventory data.

\* Some Bureau Area Engineers in the funding group continually blame the other regions for problems with funding, and assert that all problems can be fixed at the regional level. This is patently untrue -- although there are certainly problems within the Areas, any Area only receives the aggregate "relative need" share of its tribes.

\* Some of the tribal representatives are of the belief that if no consensus is reached, the existing formula will continue in effect by default. Bureau representatives have actively encouraged this idea.

That gives some idea of the tone. At one point, at the Anchorage meeting, one of our technical people read to the formula group Senator McCain's floor statement, when he introduced the amendment to TEA-21 that required the Negotiated rule-making. There is little other legislative history to go by. The floor statement said quite plainly that the criteria was borrowed from language used in the NAHASDA legislation, and was to be used by the neg-reg committee to develop a new funding allocation formula. Senator McCain went on to say the amendment "was to ensure that the new funding formula fairly takes into account Indian communities who have not had their roads needs met under previous formulas." This was ignored.

Negotiated rule-making is a consensus-based process, and it is unclear to me how we are to make any progress when some of the representatives won't accept anything other than the status quo. The Bureau itself does not even define the task as negotiating a new formula.

Of course, some of the tribal representatives are also opposed to any change in the formula. No one wants to lose money. Recently, when Congress made \$18.3 million in totally new money available in the FY 2000 appropriation, the small tribes representatives were unable to persuade the funding formula group or the full committee to even recommend, in concept, that the Bureau redirect some of the new money to benefit tribes which have not participated in the program. This was debated for a full week, with several alternative proposals presented, but no consensus was reached. Again, some of the most vigorous opponents to any redirection of funds were Bureau employees.

I don't believe that the few tribal representatives who oppose changing the formula are completely entrenched in their positions. I can't imagine that any new formula would not treat tribes with large populations and land bases well. The real

obstacle is the Bureau itself. By and large the Bureau controls the information flow. A tribal representative who is told 1) that no negotiation is necessary, because if an impasse is reached nothing will change, 2) that there is no need to look at funding data or consider the interests of tribes nationally, and 3) that all of the problems are the fault of "other" regions, has very little reason to negotiate.

### Recommendations

I have three recommendations.

First, Congress should give the Bureau clear direction that the negotiated rule-making is expected to produce a *new* funding formula, taking into account the interests of *all* tribes, and the criteria set forth in TEA-21. Further, if no consensus is reached and the Bureau continues to use the existing "relative need" formula, Congress should be prepared to legislate an allocation method in FY 2001.

Second, there should be a Congressional audit of the BIA's Transportation Program. An independent analysis of the way the Bureau allocates and spends IRR money would, in the long run, help the Bureau, the tribes, and Congress make it a more efficient program, more finely tuned to the needs of Indian people. In my view, the Bureau has misdirected funds that are appropriated to meet the transportation needs of tribes, to meet the needs of the Bureau. Those are not identical interests.

It is not uncommon for particular Areas to fail to obligate all of the limited funding available to them, and for projects to take years and years to be completed. The BIA Transportation Department is the last of the old-time BIA fiefdoms. For other BIA programs, PL 93-638 contracting and in particular self-governance compacting have brought greater accountability, and much more access to information. Tribal contracting of roads projects is still relatively new, and the Bureau simply refused to allow compacting until this year.

One of the more frustrating aspects of dealing with the BIA roads program is that getting clear information can be almost impossible – even our Area Office has difficulty getting information from Central Office. I have pages of correspondence from Juneau to BLADOT requesting, unsuccessfully, a clear explanation of how roads maintenance money is allocated. An audit would bring the light of day to this program.

Third, I believe Congress should seriously consider transferring the entire IRR program to the Federal Highways Administration. This would have to be done carefully to preserve tribal contracting authority. But transportation is the core competency of the FHWA, it is not the Bureau's. I don't make this recommendation lightly. Kawerak gets along very well with the Juneau Area, and I suspect it would be easier for us to negotiate contracts with the Bureau than it would be with a new agency. But nationally, the BIA roads system is a dinosaur which shows no willingness to change.

Thank you, again, for allowing me this opportunity to share my thoughts today. Congress did the right thing when it required negotiated rule-making. I hope that you will continue to exert pressure on the Bureau, or take more direct action, to ensure that IRR funds are fairly distributed and efficiently used.



inventory. A tribe with a resident Indian population of 1,000 members with an extensive BIA roads system receives, on a continuing basis, a much higher level of funding than another tribe with the same population without BIA roads - but who needs them. Under the current funding formula, those tribes without roads are only able to access the 20% of the IRR funding which is distributed based on population. Those tribes without roads who need them - are denied access to 80% of the funding.

I do not believe significant change will be made to the Indian Reservation Roads funding formula unless Congress directly legislates it. The representation on the committee is such that any attempt to make major changes to the funding formula will be blocked.

**QUESTION: Do you see any disadvantage this idea [transferring the IRR program to FHWA] may have for Indian Country?**

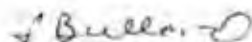
I recommended that Congress consider this idea, not necessarily that it be done. I do not know, for example, if the Federal Highway Administration has the capacity to do this. If it does have the capacity, our main concern would be that tribal contracting and compacting ability under PL 93-638 be fully preserved, and that the Office of Self-Governance continue to have a role in negotiating compacts.

If these concerns could be met, I am unaware of other disadvantages for Indian Country. Some tribes may feel that the transfer of this or any other program from the BIA diminishes the federal trust responsibility to tribes in some respect, but I do not share that view.

Thank you for the opportunity to respond.

Sincerely,

KAWERAK, INCORPORATED



Loretta Bullard  
President

cc     Senator Ted Stevens  
       Senator Frank Murkowski  
       Congressman Don Young

# RED LAKE BAND of CHIPPEWA INDIANS



Red Lake, MN 56671

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Organized April 18, 1918  
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January 6, 1988

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## TESTIMONY OF THE HONORABLE BOBBY WHITEFEATHER, CHAIRMAN

### RED LAKE BAND OF CHIPPEWA INDIANS TRIBAL COUNCIL

Before the U.S. Senate Committee on Indian Affairs

Hearing on Indian Reservation Roads and Bridges

October 30, 1999

Good morning, Mr. Chairman, Mr. Vice Chairman, and Members of this Committee. My name is Bobby Whitefeather. I am the Chairman of the Red Lake Band of Chippewa Indians. I appreciate the opportunity to testify on Indian Reservation Roads issues, including the present negotiated rulemaking process under TEA-21.

With me is Mr. Jim Garrigan, who is the Roads Director for my Tribe. Jim retired after 32 years with the BIA roads program and came home about four years ago to work for his Tribe. He brought back to Red Lake a great deal of inside knowledge of how the BIA roads program does, and does not, work. Jim is recognized as a roads expert by many Indian tribes around the country. Accordingly, he was chosen by the Minneapolis Area tribes to be their representative on the TEA-21 Negotiated Rulemaking Committee. That Committee then elected Jim to serve as its Tribal Co-Chair.

My testimony will address five areas of great concern to the Red Lake Nation: (1) the need to revise the statutory obligation limitation to provide fair and equitable funding; (2) the BIA's mis-directed use of Indian roads funds; (3) the barriers Red Lake has encountered in its efforts to negotiate a roads self-governance funding agreement under TEA-21 with BIA; (4) the pattern of BIA conduct that has frustrated the work of the Negotiated Rulemaking Committee; and (5) the need for complete equity in the national allocation of Federal highway trust funds. But first, permit me the opportunity to describe for you the Red Lake Indian Reservation and our road system.

Red Lake Enterprise, Red Lake Sawmill, Red Lake Fishing Industry,  
Red Lake Bingo, Red Lake Builders, Chippewa Trading Post-Red Lake & Foreman



### *Background on the Red Lake Indian Reservation*

Compared to other tribes, Red Lake is a medium-sized Tribe with more than 9,500 members, most of whom live on our Reservation. The Red Lake Indian Reservation is located in a rural area within the boundaries of the State of Minnesota. Our Reservation has over 840,000 acres of tribal trust land and water. While over time it has been diminished from its original 15 million acres, our Reservation has never been broken apart or allotted to individuals and lost to non-Indians.

Thanks to the wise insistence of Red Lake leaders several generations before me, our Reservation is not governed by Public Law 83-280. This means the Red Lake tribal government and the United States government have full civil and criminal enforcement responsibilities for the Red Lake Reservation, and that the State of Minnesota has neither civil nor criminal enforcement responsibility or authority over our Reservation. As a consequence, our tribal government is responsible, in conjunction with the United States, to provide a full range of governmental services to Reservation residents. We administer transportation, police, judicial, penal and fire protection services, natural resource protection and management, social services, health and other emergency services, economic development and planning, and many other governmental activities. At the end of this calendar year, the Red Lake Band will be completing our third year of operating BIA-funded programs under tribal self-governance authorities.

A December, 1995 study carried out by the Department of Economics, Bemidji (MN) State University, found that approximately 6,130 of our tribal members live on the Reservation in 1,560 households. A majority of Reservation households (59%) have incomes below the federal poverty line for a family of four. Forty percent of all Reservation households receive income from employment with our tribal government, making tribal government jobs the single most important source of income on our Reservation. Our Tribe employs approximately 2,400 workers in its governmental programs and enterprises, for a total annual payroll of about \$17.5 million. In addition, many of our tribal members survive on a traditional subsistence economy of fishing and small-scale timber cutting.

Due in part to our location far from centers of population and commerce, we have few jobs available in the private sector economy. If our members work off Reservation, they necessarily must travel often more than an hour to get to or from their job. While unemployment rates throughout Minnesota have dropped to historically low levels of approximately 2.5%, the Red Lake Reservation unemployment rate remains at an outrageously high level of 65.0%. The lack of good roads, communications, and other necessary infrastructure chronically thwarts economic development and job opportunities.

### *Specific Information on Red Lake Roads and Bridges*

Due to welfare reform and other factors, the population of the Red Lake Indian Reservation is growing much faster than can be accommodated by the present

infrastructure. Our infrastructure, and especially our road system, are being "taxed" to the limit. The Red Lake road system consists of approximately 350 miles, which includes approximately 70 miles of paved roads, 60 miles of gravel surfaced roads and 120 miles of earth surfaced roads. We also have approximately 50 miles of state-owned roads on the Reservation. There are no county or township roads on the Reservation, however, there are county and township roads that provide access to the Reservation. Of the 70 miles of paved roads, 40% have surfaces that are beyond their design-life of 20 years. With our expanding population, our gravel and earth-surfaced roads will require complete reconstruction to serve our residents. With the level of funding we currently get, we have to "phase" some of our larger projects into multiple years. We are currently in the last phase of a project that is vital to the economic development of the Reservation and that has required five years of funding to complete. We have been somewhat successful in leveraging state dollars for projects on the Reservation. We have recently completed construction of one new bridge and will be starting a bike path project on both sides of a state highway that connects our two largest communities on the Reservation. We are currently working with the state on two more bridge projects.

*(1) Immediate Statutory Relief Needed to Stop the Diversion of Indian Roads Funds Due to TEA-21's "Obligation Limitation"*

Two years ago, Red Lake and other tribes worked hard to convince the Congress to increase funding for Indian roads and bridges during the ISTEA reauthorization process that became TEA-21. The dreadful conditions of our roads provided more than ample justification for a doubling of the funding being allocated to Indian roads. In the end, we received far less than what we needed. We are, however, grateful for what our friends, led by Sen. Domenici, were able to do to increase funding from approximately \$191 million a year nationwide to \$275 million.

However, at the same time, in the same TEA-21 law, a new cut was imposed on our funding that we had never before been subjected to. Because TEA-21 for the first time extended the "obligation limitation" to the Indian roads allocation, we lost about \$25 million of the \$225 million we were promised for fiscal year 1998 and about \$32 of the \$275 million we were promised in fiscal year 1999. We stand to lose even more in fiscal year 2000. Additionally, the 1% set aside that amounted to about \$13 million additional funding for Indian bridge rehabilitation and replacement in ISTEA was removed from TEA-21 and Indian bridge funding now must come out of the IRR funding. The loss of this extra \$13 million in highway bridges set aside funding results in a net loss to the IRR program of \$39 million. While we are grateful for the increases in funding under TEA-21, the obligation limitation, the loss of the bridge set aside funding, and other takedowns has resulted in a paltry \$12.4 million increase to the IRR construction program nationwide.

Here is how the obligation limitation works. The Federal Highway Administration, or FHWA, is required by TEA-21 to withhold a certain percentage (annually varying around 11%) of the total IRR obligation authority amount at the beginning of each fiscal year to be redistributed near the end of that fiscal year to

recipients with projects that are immediately ready for funding. However, in expanding the obligation authority withholding provision to the Indian roads allocation, TEA-21 failed to expand the redistribution authority to include Indian tribes. As a result, tribes are barred from sharing in the end-of-year redistribution and so money authorized and appropriated for tribal roads is diverted to states for their general purposes. This is not fair and equitable treatment. We feel that if any funds are withheld from the IRR allocation, they should be redistributed back to the IRR program.

The obligation limitation placed on the IRR funds under TEA-21 is totally inconsistent with all previous transportation statutes. In years past, the Indian roads funds were exempt from the obligation limitation, thus making 100% of the authorized contract authority amount available at the beginning of each year. Red Lake and other tribes sought to have all roads funds made available to them at the beginning of the fiscal year in the form of advance funding, so that project planning and development and maximum flexibility could occur at the local level when the weather and other conditions permitted rather than having to wait upon a federal fund distribution system that sometimes could delay projects. The Congress agreed and included in TEA-21 a provision to make "all" roads funds subject to P.L. 93-638 and its advance funding authority. However, at the same time the Congress added an obligation limitation that withheld and then diverted some of these funds away from Indian tribes. Clearly, the Congress went three steps forward and two steps backwards with TEA-21, undercutting its forward progress by applying an obligation limitation.

Both the \$275 million promised for Indian roads and the specific dollar amounts listed for the states are a fiction. The actual Indian road funding level is far less than promised, because the obligation limitation provision elsewhere in TEA-21 cuts it back by more than 10%. The actual state funding levels, however, are larger than stated in TEA-21, because the states receive an additional "August distribution" of funds withheld from Indian and other accounts under the obligation limitation. While Red Lake and other Indian tribes are all-too-familiar with receiving the short end of the stick, given our history of dealings with the United States, we object to the continuation of this kind of treatment. A promise is a promise, and as a matter of national honor, promises should be kept by the United States.

Since the obligation limitation provision now withholds funds from tribes and states but redistributes the withheld funds only to the states, a legislative change is necessary to exempt IRR program funds from the obligation limitation withholding: We ask that this obligation limitation be removed and our funding restored to the 100% level as soon as possible through an appropriate amendment to TEA-21. We have attached proposed language for your consideration.

## ***(2) The BIA's Use of Roads Funds Is Mis-Directed***

As a Tribal Chairman, I am saddened by the questions I feel I must pose to the BIA. We have seen evidence on several occasions of apparent mis-direction by BIA of

Federal highway trust funds for purposes other than Indian roads. We fear we have scraped only the surface of the problem.

On one occasion, Mr. Garrigan was informed that \$200,000 in roads funds were spent to move the entire Minneapolis Area Office (MAO) from downtown Minneapolis to Fort Snelling near St. Paul this year. Of the 30 or so BIA personnel in the MAO, only six work in the roads program. Yet it appears that roads program dollars funded the move of the entire office. If this is the case, why are roads funds supporting other BIA functions?

On another occasion, Mr. Garrigan had the opportunity to observe MAO budgets that indicated BIA has used \$70,000 in roads funds to support a full-time contracting officer position at the MAO. There are now four contracting officers at MAO responsible for all kinds of contracts. It appears that roads funds are being used by the BIA to support activities unrelated to roads construction. If this is the case, why?

Mr. Garrigan has also been informed that the travel costs of some Area Directors in some Area Offices are regularly charged to and borne by the roads program even though the travel does not appear to be roads-related. If this is true, why is it permitted?

While these allegations are troubling, the bigger problem is that neither Red Lake nor other Indian tribes have been able to get detailed information from the BIA on how it spends the "up to 6%" Indian roads program management funds. This is an especially acute problem, because our roads are in terrible condition and focusing all the funding on actual construction is of critical importance.

For years, the BIA has asked for and received authority in the annual Interior appropriations law to spend on "program management" costs "up to 6 percent" of the Indian roads construction funds transferred to BIA from the Federal Highway Administration.

There are several points I want to make about this so-called "6 percent" money. First, the BIA has always ignored the "up to" part of the law and taken a full 6 percent. Second, the BIA has refused to transfer any of these program management funds to Indian tribes who assume program management functions previously carried out by the BIA with the 6% funds. Third, the BIA has withdrawn greater than 6% of the transferred funds for various program management activities, such as the negotiated rulemaking process, biannual bridge inspections, quality assurance traffic studies, integrated IRR systems development, and town hall meetings. It appears that the BIA was the greatest beneficiary of the increase in TEA-21 funding because it now is applying the 6% to a larger appropriation. We request that this Senate Committee insist upon a full accounting by BIA of its expenditures of these "up to 6 percent" funds. Strict oversight is needed to ensure that all funds are spent for critically needed road construction.

The diversion and questionable use by BIA of critically needed road construction funds aggravates the already deteriorated conditions of our Reservation's roads. As

everyone in this room knows, in most cases good roads go right up to, and stop at, the edge of Indian Country everywhere. I refer you to a picture that shows how the road changes as you cross the border into the Red Lake Indian Reservation. This is the case despite the fact that we have one of the most successful tribal roads programs. We have made the most of the funding we have received, and have prepared and approved roads project plans far into the future. What we lack is sufficient funding on an equitable basis compared to that enjoyed by state and county governments.

***(3) BIA Barriers Block Tribal Efforts to Negotiate Roads Self-Governance Agreements***

Despite express statutory authority and accompanying indications of congressional intent, the BIA has refused to fully incorporate P.L. 93-638, as amended, into the IRR program in both Self-Determination Contracting and Self-Governance Compacts.

P.L. 93-638 was designed to provide for an orderly transition and reduction of the federal bureaucracy in order to give tribes meaningful authority to administer federal programs. Instead, despite the fact that the enactment of TEA-21 expressly applied P.L. 93-638 authorities to TEA-21 funds, the BIA has been increasing its roads staff. Numerous attempts have been made by tribes to contract and compact the IRR program only to fail because BIA refuses to identify its residuals and will not allow tribes to administer the full program.

TEA-21 expressly subjects all IRR funding to P.L. 93-638, as amended, including the 6% used for program administration without regard to the organizational level at which the Department of Interior has previously carried out such programs, functions, services, and activities. In negotiations over self-governance agreements and in TEA-21 Negotiated Rulemaking Committee sessions, the BIA has claimed that the 6% is not available for transfer to tribes. This has meant that there will be an unnecessary duplication of services and failure to transfer funds that should be sent to tribes. Moreover, the BIA has been arguing that it must retain even more funding from tribes by withholding project money to ensure public health and safety. This is clearly a tribal responsibility under P.L. 93-638, as amended, and another attempt by BIA to disregard the congressional mandate.

Year after year, since 1994, Red Lake has devoted considerable time, money, and effort trying to get an extremely resistant BIA to negotiate Red Lake's roads funding into a Self-Governance agreement. It was not until six months ago that the BIA finally agreed to sit down and begin negotiations, and then only because the Congress heeded our request and expressly amended TEA-21 to provide an additional statutory mandate that required the BIA to negotiate. Even at that, we were only able to do a self-governance "demonstration program" that was restricted to only two tribes, one of which was the Red Lake Band.

Getting our self-governance negotiations to begin, we learned, was just the start of what became a long journey. The BIA came up with reason after reason why our proposal could not be approved. The BIA initially said no to advance funding. No to tribal assumption of functions previously carried out by federal officials. No to tribal review and control authority. No to transfer of any of the "up to 6 percent" management funds. No to tribal or third party inspections. The only change the BIA was initially willing to accept was to change the name of our existing Title I roads contract to a funding agreement. The only way we could get the BIA to finally negotiate was to mutually identify the "residuals" and have their staff cost them out. They were quite surprised to see the results.

Our self-governance approach may have posed a threat to the job security of the BIA Area and Central office staff with whom we had to negotiate. We understand how difficult it is for civil servants to negotiate away their own jobs. But we are the ones who pay the gas taxes that provide the roads funds. And these roads funds are appropriated for the purpose of building critically needed roads, not to preserve the jobs of federal workers.

Let me give one example of the unreasonable negotiation demands made by BIA. P.L. 93-638 requires that engineering work done by a tribe be performed by a licensed engineer. We have two licensed road engineers on our tribal roads staff. This requirement makes our staff senior to, and far more credentialed than, all of the BIA engineers at the Minneapolis Area Office. We proposed that Red Lake assume all design and engineering work, including plans, specifications, and estimate approvals under a stewardship agreement with the Federal Highway Administration. We proposed that our work would meet or exceed industry and state standards and be certified by our licensed engineers without further BIA review or approval. The less credentialed BIA staff refused to allow this. They would not even allow us to obtain a third-party (non-BIA) review. We suspect that in large part the BIA adopted this position because it did not want to see responsibilities transferred to Indian tribes that would result in reductions in BIA jobs.

Mr. Chairman, and members of the Committee, we thought these policy decisions were made decades ago with the enactment of P.L. 93-638. But the BIA roads program seems to be the last bastion of the old paternalistic bureaucracy. Indian tribes are building huge buildings and administering complex operations without BIA oversight, but BIA roads staff seem to think tribes cannot build a safe road without a BIA shadow looking over our shoulder. The BIA's approach wastes scarce dollars. We want all of our roads funds to be spent on our Reservation building roads. We don't need or want an expensive BIA bureaucracy second-guessing our every move and wasting 6% or more of our precious roads funds.

Mr. Garrigan learned at the negotiations that the BIA was insisting on withholding more than 6% of our project funds. He reported to our Tribal Council that this meant the BIA negotiators were demanding tens of thousands of dollars to perform functions we have assumed; that the Tribe would do all the work the BIA previously did

but that the BIA must still keep most of the money the BIA previously used to do that work because the BIA says it must double-check all of the Tribe's work. In no other area of the Federal-Tribal relationship do we encounter such a degree of paternalism.

The Congress in TEA-21 said "all" roads funds shall be subject to mandates of P.L. 93-638. We need your help in directing the BIA to transfer all funds and authority to requesting Indian tribes.

*(4) BIA Conduct Has Frustrated the Work of the Negotiated Rulemaking Committee*

I am also concerned by a pattern of conduct by the BIA that has thus far delayed and frustrated any real change from being instituted by the Tribal-Federal negotiated rulemaking committee mandated by TEA-21. Just like the circumstantial evidence in a criminal case, here, too, there is a pattern of prior conduct. There is a motive. And there is a victim -- change has been stymied and the hope for change -- the Negotiated Rulemaking Committee -- has been slowed to a crawl.

According to our Tribal Roads Director who knows from his personal experience, the BIA roads department has ruled with a heavy hand the construction of roads in Indian country. He has helped us see how the federal bureaucracy is threatened if the rules are streamlined, the regulations simplified, and authority and funds are transferred to the local level. The Negotiated Rulemaking Committee holds the promise of such change.

From the beginning, the BIA overlooked the deadlines in TEA-21 and failed to form the Negotiated Rulemaking Committee until several weeks before its statutory deadline to produce proposed regulations. The BIA placed on the Committee federal roads staff who appear to have taken positions that mostly serve to protect the status quo and resist change.

The BIA assigned staff to assist the Committee who have had surprising difficulty accomplishing basic tasks. For example, they have at times not provided more than five days' notice of where the next meeting is going to take place. They have been unable to find meeting space that is large enough for fifty or sixty people to sit and talk without huge posts in the middle of the room. They have been unable to make sufficient and timely photocopies of basic negotiation materials. They have failed to fax basic negotiation information to tribal technical staff.

The Negotiated Rulemaking Committee was paralyzed for its first five months of meetings by petty disputes raised by federal negotiators over the language of the protocols or rules by which the negotiations were to be conducted. The tribes proposed protocol language similar to that which was adopted by HUD's Federal-Tribal Negotiated Rulemaking Committee on the NAHASDA regulations. But the federal team argued with nearly every sentence. When agreement was finally reached, the BIA representatives promised that the Secretary would sign the protocols on behalf of the Department of the Interior. That promise was withdrawn. The Secretary refused to sign. Federal officials not at the negotiating table insisted on further changes being made to the

agreed-upon protocol document. Small matters became vested with strategic importance. The entire negotiation process stalled and weeks were wasted. Red Lake, along with other tribes, was upset by the process and outcome.

Federal members of the Committee, strategically placed on all workgroups, have steadily urged that no change is necessary to the existing rules and regulations. To their credit, the tribal members on the Committee have, for the most part, refused to take this easy way out and instead have insisted on a deregulation and simplification of the present rules. That is requiring great effort, because tribal representatives must negotiate with a federal team that appears to oppose change and to critique every proposal that would alter the status quo. Our present projections are that the Committee will conclude its proposed regulation writing before mid-2000, more than a year behind schedule.

The federal negotiators at the table appear to lack much authority to negotiate. In the chaos that attended adoption of the protocols, their federal superiors sent a clear message to the Committee that important questions will be decided, not in negotiations with the tribal representatives, but instead by federal officials absent from the negotiating table. This message has made the federal negotiators very tentative and conservative, and has chilled the trust and confidence of the tribal negotiators that what is being negotiated has any connection with what will be the final reality. As you can imagine, this negotiation dynamic fosters neither progress nor creative bargaining. Unless the negotiation tone is dramatically improved, I am increasingly pessimistic about the prospects for the kind of tribally driven change Congress intended this negotiated rulemaking process to bring about.

#### *(5) Equity in Allocating National Highway Funds*

In addition to our request for equity regarding the obligation limitation issue, we are also requesting equity in how the Congress and the Administration distribute the overall national highway trust funds. When TEA-21 was being debated on the floor of the House, it was recognized that Indian reservation roads make up 2.63% of all existing roads eligible for TEA-21 funding. However, under TEA-21 Indian tribes receive less than 1% of TEA-21 funding for these roads. If Indian country were to receive its full pro-rata share of the billions included in TEA-21, Indian reservations would have received \$4.7 billion instead of the \$1.6 billion over the six-year period of TEA-21. We often hear that Indians do not pay taxes. But the truth is that every Indian who puts a gallon of gas in his or her car contributes to the highway trust fund. Your assistance in increasing the national allocation to Indian country will be appreciated.

#### *Conclusion*

I wish to conclude my remarks with a few personal comments. I was an active tribal representative on the HUD-Tribal Negotiated Rulemaking Committee that successfully wrote the new regulations and formula under NAHASDA. We did it within the timeframes set out in the statute that were similar to those guiding the TEA-21 negotiated rulemaking process.



I am disturbed by the reports given me by the TEA-21 Committee. While rulemaking negotiations are bound to hit bumps in the road along the way, the HUD process worked because federal and tribal negotiators had the authority to make decisions at the table that their superiors on both sides supported.

I wonder whether effective change can ever come through negotiations with an entrenched BIA bureaucracy. And so I would encourage the Congress to give consideration to a statutory transfer of Indian roads program management authority from the BIA to the Federal Highway Administration under strict requirements that tribal governments, consistent with P.L. 93-638, be treated like state and local units of government for purposes of the administration and expenditure of Federal Highway Trust funds. This idea has been around for quite some time. Given the frustrating lessons learned thus far in the negotiated rulemaking experience, it may be time to put the transfer in motion in order to preserve the government-to-government relationship between Indian tribes and the United States.

Thank you for this opportunity to provide this testimony. Both Mr. Garrigan and I are available to answer any questions you may have.

Proposed Tribal Amendment to TEA-21, P.L. 105-178, as amended by P.L. 105-206

At the appropriate place, insert:

#### **SEC. 1. SHORT TITLE.**

This Act may be cited as the "TEA 21 Technical Amendments Act".

#### **SEC. 2. TECHNICAL AMENDMENT.**

"Section 1102(b) of the Transportation Equity Act for the 21<sup>st</sup> Century is amended –

(a) in paragraph (7) by striking "and" after the semi-colon;

(b) in paragraph (8) by striking "." and inserting in its place "; and"; and

(c) by adding a new paragraph at the end thereof — "(9) under section 1101(a)(8)(A) of this Act."

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#### **Purpose and effect of technical amendment.**

Indian reservation roads and bridges are some of the worst in the Nation. Many Native American communities are connected to vital centers for health care, jobs, education, goods and services only via unpaved and weather-compromised roads. Individual Indians in remote reservations typically travel long distances by car, and consequently pay a disproportionately higher share of the federal fuel taxes that support the Highway Trust Fund.

In FY 1998, TEA-21 allocated \$225 million for Indian reservation roads. But for the first time, an obligation limitation was imposed on the Indian reservation roads account, resulting in \$24.17 million of this \$225 million being diverted to non-Indian communities. In FY 1999, TEA-21 allocated \$275 million for Indian reservation roads and bridges. \$31.7 million of this \$275 million was diverted to non-Indian communities because of the obligation limitation requirement.

The proposed technical provision would amend TEA-21 to add the Indian reservation roads and bridges program to the list of programs which are statutorily excluded from the obligation limitation for the duration of TEA-21. It would have the effect of providing to Indian reservation roads and bridges the full annual amount of funds (\$275 million) allocated to Native American communities under TEA-21 as Congress originally intended.



# RED LAKE BAND of CHIPPEWA INDIANS



Red Lake, MN 56671

Phone: 218-679-3341 • Fax: 218-679-3379

## DIVISION:

October 22, 1999

### SUPPLEMENTAL INFORMATION OF JAMES GARRIGAN REGARDING TESTIMONY OF THE HONORABLE BOBBY WHITEFEATHER, CHAIRMAN RED LAKE BAND OF CHIPPEWA INDIANS TRIBAL COUNCIL

Before the U.S. Senate Committee on Indian Affairs

Hearing on Indian Reservation Roads and Bridges

October 20, 1999

#### Concern No. (2) - The BIA's use of Roads Funds is Mis-Directed

In response to questions from the Chairman of the Committee on Indian Affairs, the Honorable Ben Nighthorse Campbell, regarding the concern about BIA mis-direction of roads funds, the following supplemental information is offered:

1. **The use of IRR funds to move the Minneapolis Area Office:** The issue that \$200,000 in roads funds were spent to move the entire Minneapolis Area Office from downtown Minneapolis to Fort Snelling, MN is not an allegation of the Red Lake Band. It is an allegation of Area Office Staff who phoned me shortly after the face to face negotiations to include the IRR program in Red Lake's AFA, that this move was paid for with \$200,000 in IRR funds. I doubt I will be able to obtain the BIA financial records that would document in writing what funds were used to pay for this move.
2. **The use of IRR funds to support Contracting Officer Positions:** On May 14, 1999, during the self-governance negotiations to include the IRR program in Red

Red Lake Enterprises, Red Lake Sewer, Red Lake Fishing Industry,  
Red Lake Bingo, Red Lake Builders, Chippewa Trading Post-Red Lake & Pommeau

TRIBAL COUNCIL  
Organized April 18, 1918  
(Formal Constitution & By-Laws)  
January 5, 1986

OFFICERS:  
BOBBY WHITEFEATHER, Chairman  
JIMMY BEE, Secretary  
JOHN KEND, Treasurer

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BRUCE WELLS, MD

#### ADVISORY COUNCIL:

1. HONORARY COUNCIL:

CHIEF COUNCIL: RAY LAM

Site: 1000 1st Avenue

Red Lake, MN 56671

Map: 1000 1st Avenue

Phone: 218-679-3341

Fax: 218-679-3379

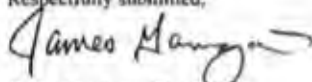
Web: 218-679-3341

Lake's AFA, I met with the then Area Road Engineer, Mr. Anthony Kirby, regarding the costing out of the residuals of the Minneapolis Area Office. During this meeting, Mr. Kirby showed me his budget for the 6% funds assigned to the Minneapolis Area Office. Included in this budget was an item to fund one FTE Contracting Officer Position in the amount of \$70,000.00. It is my understanding that this is common practice throughout the Bureau. I have also been informed that the amount of IRR funds used to support Area Office Contracting Officers is approximately \$1.8 Million. This seems like a total waste of IRR funding due to the fact that P.L. 93-638 does not require that contracting functions be carried out by warranted Contracting Officers. These functions can be carried by an Awarding Official who can be the Area Road Engineer.

3. *The use of IRR funds to pay for Area Directors Travel expenses:* This again is an allegation made by Area Office Staff. Back in 1995 I was informed that this was happening. I was also made aware that the Minneapolis Area Road Engineer, at that time, had purchased computer equipment for the Minneapolis Area Office with \$50,000 of Red Lake's Road Maintenance funds. When I called the Area Engineer and inquired about these incidents he told me it was none of my business and hung up on me. The Red Lake Maintenance program was never reimbursed for this unauthorized expenditure by BIA of our roads maintenance funds.

The items other than item 2 are based on verbal statements made by Area Office staff to me. I believe there are compelling reasons to warrant further investigation by the Senate Committee and the General Accounting Office. I doubt that the Minneapolis Area Office would furnish this information to the Red Lake Band, even under FOIA

Respectfully submitted,



James Garrigan, Director  
Red Lake Tribal Roads Program

xc: Bobby Whitefeather, Chairman



**QUESTION: What disadvantages would Indian Country see if the IRR program authority were transferred to the Federal Highway Administration?**

Response: With any change there is the possibility of inefficiency and uncertainty but, considering the present direction of many tribes into self-determination and self-governance, this would probably be short lived and manageable. For those tribes who desire to operate the IRR program under P.L. 93-638, it would eliminate the "middle man" and make more of the administrative and program dollars now being absorbed by the BIA available to the tribes. Some direct service tribes who have their program operated under the "force account" method by the BIA may experience some difficulty in the transition. We would urge the Committee to include in any transfer statute express language modeled after the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) which would reaffirm that the provision of transportation assistance to Indian tribes under TEA-21 is an "essential element in the special role of the United States in helping tribes and their members" as a result of the fact that "the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people." Cf. 25 U.S.C. 4101. Likewise, we would urge that any transfer statute, like was done in NAHASDA, require that Public Law 93-638 authorities apply to the Department of Transportation and its Federal Highway Administration, to ensure that those agencies deal directly with Indian tribes. I can see no long term disadvantage to Indian Country if the IRR program was transferred to FHWA.

Respectfully Submitted,

  
Bobby Whitefeather, Chairman  
Red Lake Band of Chippewa Indians

**STATEMENT OF THE  
NAVAJO NATION  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS**

**On  
Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21)**

**OCTOBER 20, 1999**

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The Navajo Nation welcomes this opportunity to provide its views to the Committee about the implementation of the Transportation Equity Act for the 21<sup>st</sup> Century ("TEA-21"). TEA-21 is an important piece of legislation, which promises many improvements for the transportation infrastructure within Indian Country. TEA-21 is particularly important to the Navajo Nation since the Navajo Nation has such a large land base in desperate need of roads.

In particular today, the Navajo Nation would like to bring to the Committee's attention its experience with the Negotiated Rulemaking process and concerns the Nation has with the distribution of funds during pendency of the Rulemaking, especially the obligation limitation imposed by Section 1102 of TEA-21 and the bridge replacement program.

**RULEMAKING**

Overall, the Negotiated Rulemaking is progressing, although not at the speed which was originally desired. The original delays in naming and organizing the Rulemaking Committee were compounded by the Secretary of the Interior's reluctance to sign off on the Protocol's which formed the basis for the procedures to be used for the rulemaking. These delays have impacted the ability of the Rulemaking Committee to develop a final product in accordance with the proposed time lines. Nevertheless, it is anticipated that with the possible exception of funding formula, which will be



discussed shortly, the other aspects of the proposed regulations will be ready for release soon.

Of the four workgroups which make up the Negotiated Rulemaking Committee, the workgroup most in controversy is the Funding Formula Workgroup. This workgroup has been tasked with the review and development of possible alternative methods for distributing funds under the Indian Reservation Roads ("IRR") program. The Funding Formula Workgroup has encountered problems surrounding the appropriate method to address needs of smaller tribes, who have asked the Workgroup and Committee to consider the possible "set aside" of a portion of the IRR funding to be used as a base to address transportation projects which might not otherwise be addressed as quickly. The Navajo Nation has opposed such a set aside, as being contrary to the underlying principle of a relative needs formula. However, this issue has brought about an impasse in the Funding Formula Workgroup.

Given some of the difficulties faced by the Funding Formula Workgroup, it may be wise to support the development of a "partial rule." That is, rather than have a complete set of regulations, the Negotiated Rulemaking Committee would issue a set of proposed regulations on everything except the funding formula. This would have an advantage of allowing the Committee to issue the regulations in the near future.

#### **Large vs. Small Tribe Issues**

While the Navajo Nation understands that small Tribes desire a "set aside" for their use, and moreover, it seems logical that they may have real need for funds for various projects, any set aside is clearly unacceptable. Regardless of how need is determined, or the formula to be used, funding of the IRR program must focus on need and must be related to need.

It has been the position of the Navajo Nation for several years that the BIA funding to tribes must be needs based. Most recently that Navajo Nation reaffirmed this position to Assistant Secretary Gover with respect to the Tribal Priority Allocation study and workgroup. Similarly, this is the position which was taken surrounding the BIA budget development for the FY 2001 budget.

However, this is not to say that needs do not exist for small tribes. In fact, it may be worthwhile considering a general recommendation that part of the IRR funding (preferable from the 6% funding) be used by the BIA to develop a "small Tribe assistance program." The goal of this program would be to help small Tribes in the development of Transportation Improvement Plans or TIPs which clearly state their needs in a defensible manner. This type of recommendation would have several advantages, particularly in that it would help develop information which could then be used to justify larger appropriations in Congress.

#### **POST-NEGOTIATED RULEMAKING WORK**

Over the course of rulemaking meetings, it has become apparent that even after the rulemaking is concluded much work needs to be done. In particular, this seems to be on two levels: training (both general and specific to contracting and compacting) and the development of some standards regarding use of the Federal Acquisition Regulations, which would not otherwise apply to contracts under the Indian Self-Determination and Education Assistance Act.

In the process of some of the presentations, it is apparent that some employees of the BIA do not understand and/or agree with the goals of Self-Determination, let alone have an understanding of the Indian Self-Determination Act's requirements and provisions. This imposes a handicap on tribes and tribal organizations attempting to contract or compact.

Probably the only effective method to address these misunderstandings is through comprehensive training for both BIA and tribal personnel. Not only could this training help improve the implementation of the law, but it would assist in making the interpretations throughout Indian Country uniform.

#### **OBLIGATION LIMITATION**

Section 1102 of TEA-21 creates an obligation to redistribute approximately 10% of the Federal Lands Highways Program to the states as Surface Transportation Program funds. Unfortunately, the IRR program funding is located within the Federal Lands Highway Program. While this may have started off as an attempt to address

states needs for funds in road development around federal lands, it also deprives the IRR program of needed funds; for example in Fiscal Year 2000, the IRR program was allocated \$275 million, yet the obligation limitation reduced that amount by \$32 million.

### BRIDGES

While the reductions imposed by the obligation limitation hurt the IRR program, their effect is worsened by the additional reduction caused by the delays and inability of the Federal Highway Administration ("FHWA") to distribute Bridge Replacement funding. Fiscal Year 1999 is gone, yet some \$13 million designated for bridges is still being withheld by FHWA. In the current year, an additional \$13 million is being withheld, for a total of \$26 million to be eventually distributed. The obligation limitation will apply to withheld amounts, actually increasing percentages to be turned over to the states.

The Navajo Nation has requested that the bridge funding be released based on the emergency condition of most of the Navajo Nation's structurally deficient bridges. See, Exhibit "A", Resolution of the Transportation and Community Development Committee of the Navajo Nation Council, TCDCMA-21-99. However, FHWA has advised that these funds will not be distributed until the method of distribution by formula is acceptable to Indian Country. It is presumed that the Negotiated Rulemaking will determine the distribution formula for bridges, however, this formula could be delayed, particularly if the Negotiated Rulemaking Committee decides not to issue a new distribution formula immediately.

The Navajo Nation believes that it is critical that FHWA release these needed bridge replacement funds immediately, before additional funds "pile up." As the funds withheld by FHWA continue to grow, so does the need for bridge replacement.

The Navajo Nation thanks the Senate Committee on Indian Affairs for the opportunity to express its concerns and observations regarding the implementation of TEA-21. If the Committee has questions about the Act and its impact on the Navajo Nation, we will be happy to address those questions.

TCDCA-21-99

RESOLUTION OF THE  
TRANSPORTATION AND COMMUNITY DEVELOPMENT COMMITTEE  
OF THE NAVAJO NATION COUNCIL

Requesting the Federal Highway Administration and the Bureau of Indian Affairs/Department of Transportation (BIA/DOT) to Immediately Release the Accumulated Funds of \$26,000,000 from the Nationwide Priority (Bridge) Program from Fiscal Years 1998 and 1999 and to Disburse Said Funds on an Emergency Basis and to Continue Disbursements Each Fiscal Year

**WHEREAS:**

1. Pursuant to 2 N.N.C. Section 420, the Transportation and Community Development Committee of the Navajo Nation Council is established and continued as a standing committee of the Navajo Nation Council; and

2. Pursuant to 2 N.N.C. Section 423 (H) (1) (2), the Transportation and Community Development Committee is empowered to represent the Navajo Nation in all roads and transportation matters and to develop and approve priority lists for roads and transportation projects; and

3. The Transportation Equity Act for the 21st Century (TEA-21) was enacted on June 09, 1998, to address transportation matters including funding for the Federal Lands Highway Program of which the Indian Reservation Roads (IRR) Program is a part of; and

4. Based on TEA-21 at Section 1115 (b) (2), funding is authorized for the Indian Reservation Roads Program of \$225,000,000 for Fiscal Year 1998 and \$275,000,000 for each fiscal years beginning 1999 through 2003; and

5. Pursuant to Section 1115, Subsection 202 (d) (4), the law further established a Nationwide Priority Program for Indian Reservation Roads Bridges of \$13,000,000 for each fiscal year, for improving deficient bridges to either replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate de-icer to or install scour countermeasures including multiple-pipe culverts; and

6. Bridges meeting the following criteria were eligible to receiving funding:

- a) have an opening of 20 feet or more;
- b) be on an Indian Reservation Roads;

**EXHIBIT A**

- c) be unsafe because of structural deficiencies; physical deterioration; or functional obsolescence; and
- d) be recorded in the National Bridge Inventory administered by the Secretary under subsection (b); and

7. The funds to carry out the Indian Reservation Roads Bridge projects were to be made available only on approval of plans, specifications, and estimates by the Secretary; and

8. Since TEA-21 was implemented from Fiscal Year 1998, funds set aside for the Indian Reservation Roads bridges for the purpose of repairing, replacing, or rehabilitating deficient bridges throughout Indian Country have been withheld from distribution and that, to date, \$26,000,000 is being withheld and unexpended; and

9. However, even though the criteria is clear in the statute, the federal government has not released funds, instead requesting regulatory procedures; and

10. The Navajo Nation believes that such withholding of funds for needed repairs and/or replacement of deficient bridges is contrary to law since the eligibility criteria has already been established and met by the Navajo Area and is, therefore, not an issue for interpretation by any federal agency and/or consideration by the Negotiated Rulemaking process; and

11. The continued withholding of bridge funds is adverse and detrimental to the travelling public including daily commuters who utilize these deficient bridges and whose lives are at risk and jeopardy and thus raises a Federal Government liability issue; and

12. Furthermore, the continued withholding of bridge funds, causing a carryover into subsequent fiscal years, causes a higher Obligation Limitation takedown (Sections 1102 (f) of the Act) resulting in additional loss of funds to the overall Indian Reservation Roads construction program; and

13. The Navajo Nation has identified several bridges throughout the reservation which are of low rating and from the inspections conducted on these sites, have been determined to be in need of repairs or replacements and do meet the eligibility criteria as established under Section 1115. Attached hereto are copies of the Navajo Nation Fiscal Year 1999 Priority Construction Schedule, marked herein as Exhibit "A" and the Navajo Nation Bridge Priority list, marked herein as Exhibit "B".

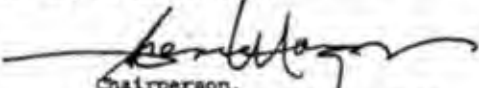
## NOW THEREFORE BE IT RESOLVED THAT:

1. The Transportation and Community Development Committee of the Navajo Nation Council hereby requests the Federal Highway Administration and the Bureau of Indian Affairs/Department of Transportation to immediately release the accumulated \$26,000,000 of the National Priority Bridge Program Funds from Fiscal Years 1998 and 1999 and to disburse said funds on the basis of a public exigency.

2. The Transportation and Community Development Committee of the Navajo Nation Council hereby requests the Federal Highway Administration and the Bureau of Indian Affairs/ Department of Transportation to continue disbursing the Bridge Program funds each fiscal year hereafter without having accumulated carryovers.

## CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Transportation and Community Development Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present, and the same was passed by a vote of 7 in favor, 0 opposed and 0 abstained, this 8th day of March, 1999.



Chairperson,  
Transportation and Community  
Development Committee  
Navajo Nation Council

MOTION: Joe Salt  
SECOND: Andrew Simpson



## THE NAVAJO NATION Department of Transportation

P.O. BOX 4628 • WINDOW ROCK, ARIZONA 86315 • PH: (520) 871-6498 • FAX: (520) 871-7987

KOLBEY A. BRIDGATE  
PRESIDENT

TRAYLOR MYERS, M.D.  
VICE-PRESIDENT

November 03, 1999

Honorable Senator Daniel K. Inouye  
Vice Chairman  
United States Senate Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Inouye:

I am writing regarding the questions you sent on October 22, 1999 to follow up on the Committee on Indian Affairs oversight hearing on the Indian Reservation Roads program and the Transportation Equity Act in the 21<sup>st</sup> Century (TEA-21). For readability, I have reproduced your questions prior to providing my response.

1. You testify that funding an appropriate method to address the needs of small tribes has brought about an impasse in the Funding Formula Workgroup.

**QUESTION:** Do you think that the difference in circumstances and needs between large and small tribes and reservations are so great that it might make sense to divide funding for the roads program into two categories, one for large tribes and one for small tribes, with separate funding formulas for each?

**ANSWER:** Separating the funding for large and small tribes does not seem to be an answer which will solve the current dilemma. First off, the goal of TEA-21 for Tribes is to provide a basic level of equity in the development of roads infrastructure. In the view of the Navajo Nation, this means that funding must be driven by need. There are already too many critics who do not understand the very real level of need which exists within Indian Country. The Navajo Nation is concerned that any attempt to divide current roads funding into small and large Tribe allocations will be viewed by some as a way to allow small Tribes to abuse funding by avoiding the need basis on which funding was to be distributed. As well, it would seem that any attempt to split funding between formulas for large and small Tribes will create a series of practical problems (e.g., when does a Tribe fit into the "small" or "large" category - is this a determination made based on reservation size or population?). Instead, the Navajo Nation favors the development of a specific technical assistance program for small Tribes, which would assist those Tribes to more readily demonstrate the needs they face, and plan to address those needs. Once articulated, that need can be used to justify the project funding, and as appropriate additional Congressional appropriations.

2. Other witnesses have testified that the problems with the BIA are such that Congress should transfer authority for the Indian roads program to the Federal Highway Administration.

QUESTION: What is your view of this suggestion?

ANSWER: Notwithstanding complaints about the BIA, the Navajo Nation opposes any move which would transfer authority for the Indian Reservation Roads program to the Federal Highway Administration. There are several reasons for this. Under current law, only the Secretaries of the Department of the Interior and the Department of Health and Human Services are authorized to enter into Indian Self-Determination Act agreements. Unless that authority was expanded to the Secretary of Transportation, there would be no Self-Determination Act contracting for the Indian Reservation Roads program. This would seem to be a reversal of a 25-year United States policy favoring Indian self-determination. Also, even though some criticism of the BIA may be justified, it is the Navajo Nation's experience that many of the difficulties with the BIA Transportation Program comes from policy determinations made by the Federal Highway Administration in the Department of Transportation. Similarly, it has been the Navajo Nation's observation that the Federal Highway Administration enjoys its "stewardship" role too much, failing to comply with clear mandates contained in the policy set forth by Congress and the Administration.

In addition to the change in policy direction, a move of the transportation from the BIA to the Federal Highway Administration raises a number of practical concerns. For example, many (if not most) BIA employees are Tribal members, most of whom have lived on-reservation and are very familiar with the deplorable condition of the transportation infrastructure in Indian Country. Similarly, the BIA is very familiar with other concerns which impact on transportation, including cultural, archeological and jurisdiction issues. Federal Highway Administration does not have this kind of knowledge and experience.

While a move to the roads program may first appear to resolve some difficulties, the Nation is concerned that it will create others, including the need to educate a Department of the nature of the government-to-government relationship enjoyed by the Tribes and the Federal government. Movement of the Indian Reservation Roads program would only increase these difficulties, not decrease them; rather than continuing the policy of Indian self-determination, transfer of the Indian Reservation Roads program would seem likely to continue the history of federal domination in this area.

Again the Navajo Nation thanks you and the Committee for the opportunity to present the Navajo Nation's views on this important matter. If you or any of the Committees have further question, please contact me.

Sincerely yours,



Paulson Chaco  
Director



Comments of  
**Alfred Ketzler, Sr., Chief Admin Officer & Member of Reg. Neg. Comm.**  
**To the**  
**Senate Committee of Indian Affairs**  
**Concerning the**  
**Oversight Hearing on the Indian Reservation Roads**  
**November 2, 1999**

Thank you, Chairman Campbell and committee members for the opportunity to submit comments. My name is Alfred Ketzler, Sr.; I am Chief Administrative Officer for Tanana Chiefs Conference, Inc. which is a consortium of 34 federally recognized tribal governments in the Interior of Alaska. I am one of Alaska's representatives on the national negotiated rule-making committee on Indian Reservation Roads, and I have attended most of the meetings since they began in March.

I would like to preface my comments by stating the obvious: the IRR program is badly under-funded nationally. There is the one funding issue that all tribal representatives to the negotiated rule-making committee agree upon, there is only 50,000 miles in the IRR system which would equate to 2.63% of the total road system in the U.S. The IRR system is funded at less than 1%. If IRR were funded on an equal basis of the states, IRR would receive \$793 million per year. My understanding is that the total construction need which the BIA uses to calculate IRR allocations is in the \$6 to \$7 billion dollar range. That would mean it would take 25 years at current funding levels to even meet today's need.

When TEA-21 increased IRR appropriations, we in Alaska certainly expected an increase of funding. Although Alaska's IRR funding did go up from 1997 to 1998, this was primarily due to BIA's Central Office accepting new construction cost figures for Alaska. Our funding actually went down substantially in 1999, approximately \$7 million. IRR funding in TEA-21 did not keep up on a percentage basis with the increase enjoyed by the states. Because \$13 million in reservation bridges money was taken out of IRR construction funding and the obligation limitation was applied to IRR funding for the first time TEA-21 took away much of its own increase to the IRR program. The obligation limitation reduced IRR construction funds by about \$31 million in 1999. TCC strongly

supports requests made by NCAI and others that Congress fund the IRR program at 100%.

#### The Existing "Relative Need" Formula

My main point today is that the method used by the BIA to distribute IRR funds among the BIA Areas is grossly unfair and in need of change. The "relative need" formula is illogical; it does not fairly or accurately measure tribal needs, and it is contrary to the authorizing legislation for the program. It effectively excludes the majority of eligible Indian reservations and Alaska Native communities from meaningful participation. The formula reflects a policy decision made by the Bureau in the early BIA-owned roads program. It intentionally tracks 80% of funding, every year, to those tribes and BIA regions that had BIA roads constructed in the past.

There are three numeric factors in the formula: 50% of the funding is allocated based on "cost to improve," which is a measure of construction costs; 30% is allocated by "vehicle miles traveled" which is a measure of vehicle use of a given road segment; and 20% is allocated by population.

Superficially, that may seem to make sense. However, both the cost to improve and vehicle-miles factors are based on a road inventory, which is limited to existing roads the BIA itself owns, or controls the right-of-way for. (There are exceptions for Alaska and for Oklahoma, which I'll get to in a moment.) But in general, tribes with no BIA roads at all are excluded from 80% of the funding, regardless of their need for new roads or to upgrade tribally owned roads. In contrast, the law, at Section 101 of Title 23, includes all public roads which serve or provide access to reservations or Alaska Native communities in the definition of Indian Reservation Roads.

Alaska is treated somewhat differently in the formula than other areas. Congress used appropriations acts in 1993 and 1994 to require that projects in the BIA's Juneau Area Transportation Plan be counted in the national BIA road inventory for funding purposes. This was later extended by administrative policy. This had the effect of counting about

1000 miles of proposed roads in Alaska in the national inventory. Without this exception, even at TEA-21 funding levels, Alaska would only receive \$2 or \$3 million at most. An exception was also made for Oklahoma tribes to include former reservation roads in the inventory.

Although we greatly appreciate the Alaska exception, it is not a good substitute for having a fair formula to begin with. Juneau has never had the funds to do necessary transportation planning in 227 communities. The Area Plan merely skims the surface, and reflects only the very top priorities of the villages at the time the plan was done. As the members of this Committee know, Alaska's rural villages are starting from almost a zero infrastructure base for ground transportation. Virtually any development we do requires some road construction. We do not have county government, our local municipal governments where they exist have virtually no tax base, and the state DOT disavows any responsibility for road construction within our villages.

One of the unfortunate side effects of the BIA's system is that true *tribal road* construction needs are never recorded or requested of congress, and neither are the true roads maintenance needs for BIA-owned roads. The relative need formula enables the BIA to sidestep its obligation to request adequate maintenance funds for its own roads.

There are other problems with the relative need formula and it's underlying data

- Cost-to-improve figures are derived from the BIA's own construction costs, as reported by the Area Offices, which means there is no incentive to be cost efficient. The more the BIA or a tribal contractor spends on a road project, the more funding it will receive in the future.
- The BIA road inventory system and allocation system is excessively complex. According to information provided at the Neg-reg, each segment of IRR road is supposed to have data sheet with 55 fields of information filled out by the tribe or the Bureau. This should be redone every year for the inventory to stay current. In

theory, once a road is built up to FHWA standards, it is supposed to drop from the inventory for funding purposes, but that rarely happens. The inventory was never completed in all areas, and there is enormous variation among the areas in how this information is collected and managed.

The Bureau in Alaska simply does not have the resources to maintain this complex of a system for 227 tribes.

- The data system is outmoded and unreliable and completely unverifiable by anyone outside the Bureau. When the BIA reported on the system to the Neg-reg this summer, the data was being maintained on antiquated computer equipment that used a Cobol operating system. It was not Y2K compliant. We were told that to verify data, we would have to physically go to Albuquerque to watch them run the numbers. In this day and age, all of this data should be available electronically and computations should be replicable on any laptop computer. All they have provided committee members is hard copies.
- The range of projects, which are eligible for spending at the local level, is much broader than the road inventory, which drives funding to the local level. This means tribes or local BIA offices can spend money on projects which are not in the BIA road inventory, and thus prevent their need from going down. In fact, if they build a new road, their funding will go up because that road will eventually be added to the inventory for improvements. I have been told that some reservations have many miles of unimproved dirt or gravel roads that stay in the inventory for funding purposes forever, because the local priority is to never upgrade those particular roads.
- One of the ironies in Alaska is that because of the lack of maintenance funds, the Bureau normally requires the state or a municipality to take the right-of-way and maintenance responsibility of a new BIA road. This means our new roads don't get into the system.

- Another particular Alaska problem has to do with the use of FHWA cost indices. The Bureau applies FHWA cost indices as corrective factor on cost-to-improve, to correct for inflation or deflation. The index is derived from data provided by the states, and assigns a percentage value for the various construction costs in geographic subregions. 1987 costs are the base. In 1997, for some reason, there was no new FHWA data in Alaska for certain of the key construction cost components, such as gravel and paving. This 1997 FHWA index was used by the Bureau to "correct" the 1999 relative need distribution. Rather than simply revert to the prior year's data, the Bureau applied an arbitrary "default factor" to Alaska's construction costs, which as I understand it, was 93% of 1987 costs. Alaska's relative need share dropped about 33% or \$7 million from 1998 to 1999.
- The funding formula does not fund all the functions that have to be performed. As a practical matter, any tribe which wishes to fully participate in the IRR program has to do transportation planning, develop it's inventory, and in general, acquire a fairly sophisticated understanding of the program. Tribes with transportation departments are able to access the system much better than those without. These functions are just not funded for small tribes. Although 2% planning funding is available, a BIA Area's 2% funding depends on how much construction money it's receiving.

In Alaska, the per tribes share of 2% money is about \$1,300-not enough to do much of anything. Some Alaska tribes spent their entire 1999 2% planning amount sending one person to observe the August Neg-reg meeting in Anchorage. This lack of funding for basic administrative capacity, by itself, effectively locks small tribes out of the program.

I will note in passing that Section 204 of Title 23 imposes some mandatory functions on all Federal Lands Highways programs, such as developing safety and other management systems, which are not funded by the BIA's relative need formula.

The BIA formulas focus on roads to the exclusion of other uses of IRR funds. At least since TEA-21 was enacted, the IRR program is not just for roads. Transit systems are specifically authorized in Section 204(b). The section in the law, which required a new formula to be negotiated for FY2000, says that the formula is to reflect the "relative needs of the Indian tribes... for *transportation assistance*." It is not just a program for upgrading BIA-owned roads.

As a practical matter, in Alaska many of our ground transportation needs are for relatively small-scale projects such as boardwalks, winter trail staking, improved trails or single lane roads. Although we can build some of these kinds of projects, they do not drive funding in the inventory.

Because of the BIA's funding formula, the majority of the tribes in the United States are effectively outside the program. Some of the tribal support staff at the Neg-reg did their own research and estimated that about 350 of the 556 recognized tribes nationally did not receive any IRR construction projects at all during the entire ISTEA authorization period. Some of these tribes may have received planning projects from construction funds, but no construction projects.

This is not a precise count, as it was based on interviews of BIA staff, but I don't believe it is far from wrong. In Alaska alone, about 200 tribes were not served during ISTEA-I doubt that more than 25 or 30 projects were built, and we have 227 tribes.

The 1999 relative need distribution data provided by the Bureau shows that 155 tribes nationally are allocated "zero" from the cost-to-improve part of the formula, which means that they have no roads in the inventory. These tribes are only attributed funding based on population. Alaska has 55 of these zero inventory tribes. I can assure you that these tribes, or most of the, have very real transportation needs. Sixteen additional Alaskan tribes are missing from the data altogether. I guess they don't even rate a zero. Another 70 Alaska tribes are credited with cost-to-improve funds, but not with vehicle miles traveled. Alaska is the only Area in which this occurs.

Alaska received \$16.6 million in IRR funds in 1999. It has 227 tribes spread out over a land area 1/5<sup>th</sup> the size of the Lower 48, a relevant service population of 60,000, and extremely high construction costs. The Billings Area, with 7 tribes, 42,000 people, and much lower construction costs, received just under \$17 million. The lowest relative need share for any Billings Area tribes is \$1.385 million, and only 2 of the 7 Billings tribes receive less than \$2 million. None of the Alaska's tribes is attributed even \$1 million, and only one tribe is close to that amount. Four-fifths of Alaska's tribes are attributed less than \$100,000, and there are many whose relative need share is only a few thousands or even hundreds of dollars.

Navajo, by itself, receive \$59 million and several million more in bridge money.

#### The Negotiated Rule-Making Process

I had thought that the negotiated rule-making would be an opportunity for tribes nationally to develop a new formula, taking into account the needs of the various regions and tribes, and following the criteria set forth in TEA-21. The relative need formula was adopted even before ISTEA, and common sense might suggest that after two transportation acts it would need to be revised. The shift to emphasis toward "transportation assistance" in TEA-21, and the specific criteria listed in the statute such as "relative administrative capacities," geographic isolation, and so forth indicate to the Alaska delegates quite clearly that Congress intended a new formula to be developed.

That is not the Bureau's understanding. To be blunt, the formula part of the negotiated rule-making has broken down. This is largely because of Bureau obstruction to any suggestion of change.

It took the Bureau nine months from the enactment of TEA-21 to even convene the first Neg-reg meeting. Protocols to govern the process were approved by the full committee, including the federal representatives, after the second meeting, but it took three more months for the Interior Department to approve the document. Even then, the authority of the federal negotiator was watered down-the clear message was that any final work product of the committee would still be subject to multiple layers of review by the agency. There is only one Area Director on the committee, Robert Baraker, and he and Mr. Gishai, the chief of BIADOT, are the highest-ranking BIA officials present. There

are at least three Area Road Engineers. Conspicuously absent is the Office of Self-Governance, despite numerous requests by tribes that someone from OSG be appointed to the Committee. OSG staff attend the meetings, but they are not on the committee.

Very early the tone was set that there is little interest in the Neg-reg at the highest policy levels of the Bureau, and even less interest in changing the way the Bureau does business. Assistant Secretary Gover has not attended a single meeting, although there is talk he would want to attend, especially the Formula Funding Group.

Although the negotiations regarding program regulations seem to be going pretty well, the funding formula discussion is going nowhere. Some of the problems, as I see them, are as follows:

- \* Not once since the beginning of the Neg-reg have any of the senior BIA officials defined the process as requiring a new formula to be negotiated. The most that the senior BIA officials have said is that the need for a new formula is for the committee to decide. This lack of coherent BIA policy direction leaves the individual BIA representative on the committee free to oppose any change.

- \* No alternatives to the present funding formula have been developed or presented by any Bureau officials, but Bureau delegates on the funding workgroup have vigorously opposed changes suggested by tribal representatives. Bureau staff severely criticized one the FHWA representatives for merely presenting alternatives to the formula. In my view, this is exactly what FHWA and the Bureau representatives should be doing if they are going to participate in the formula discussions.

- \* The Bureau did not come to the first Neg-reg meetings with any national funding information or the underlying data, which drives the formula. Although the Program Management Office did eventually make this material available, tribal representatives had to ask individually for their own copies. Some Bureau representatives in the funding workgroup argued seriously that the workgroup should not even look at funding information or inventory data.

- \* Some Bureau Area Engineers in the funding group continually blame the other regions for problems with funding, and assert that all problems can be fixed at the regional level. This is patently untrue-although there are certainly problems within the Areas, any Area only receives the aggregate "relative need" share of its tribes.



\* Some of the tribal representatives are of the belief that if no consensus is reached, the existing formula will continue in effect by default. Bureau representatives have actively encouraged this idea.

That gives some idea of the tone. At one point, at the Anchorage meeting, one of our technical people read to the formula group Senator McCain's floor statement, when he introduced the amendment to TEA-21 that required the Negotiated rule-making. There is little other legislative history to go by. The floor statement said quite plainly that the criteria was borrowed from language used in the NAHASDA legislation, and was to be used by the Neg-reg committee to develop a *new* funding allocation formula. Senator McCain went on to say the amendment "was to ensure that the new funding formula fairly takes into account Indian communities who have not had their roads needs met under previous formulas."

Negotiated rule-making is a consensus-based process, and it is unclear to me how we are to make any progress when some of the representatives won't accept anything other than the status quo. The Bureau itself does not even define the task as negotiating a new formula.

Of course, some of the tribal representatives are also opposed to any change in the formula. No one wants to lose money. Recently, when Congress made \$18.3 million in totally *new* money available in the FY2000 appropriation, the small tribes representatives were unable to persuade the funding formula group or the full committee to even recommend that the Bureau redirect some of the new money to benefit tribes which have not participated in the program. This was debated for a full week, with several alternative proposals presented, but no consensus was reached. Again, some of the most vigorous opponents to any redirection funds were Bureau employees.

I don't believe that the few tribal representatives who oppose changing the formula are completely entrenched in their positions. I can't imagine that any new formula would not treat tribes with large populations and land bases well. The real obstacle is the Bureau itself. By and large, the Bureau controls the information flow. A tribal representative who is told 1) that no negotiation is necessary, because if an impasse is reached, nothing will change, 2) that there is no need to look at funding data or

consider the interests of tribes nationally, and 3) that all of the problems are the fault of "other" regions, has very little reason to negotiate.

### Recommendations

I have three recommendations.

First, Congress should give the Bureau clear direction that the negotiated rule-making is expected to produce a new funding formula, taking into account the interests of all tribes, and the criteria set forth in TEA-21. Further, if no consensus is reached and the Bureau continues to use the existing "relative need" formula, Congress should be prepared to legislate an allocation method for FY2001.

Second, there should be a Congressional audit of the BIA's Transportation Program. An independent analysis of the way the Bureau allocates and spends IRR money would, in the long run, help the Bureau, the tribes, and Congress make it a more efficient program, more finely tuned to the needs of Indian people. In my view, the Bureau has misdirected funds that are appropriated to meet the transportation needs of tribes, to meet the needs of the Bureau.

It is not uncommon for particular Areas to fail to obligate all of the limited funding available to them and for projects to take years and years to be completed. The BIA Transportation Department is the last of the old-time BIA fiefdoms. For other BIA programs, PL 93-638 contracting and in particular self-governance compacting have brought greater accountability, and much more access to information. Tribal contracting of roads projects is still relatively new, and the Bureau simply refused to allow compacting until this year.

One of the more frustrating aspects of dealing with the BIA roads program is that getting clear information can be almost impossible-even our Area Office has difficulty getting information from Central Office. I have pages of correspondence from Juneau to BIADOT requesting, unsuccessfully, a clear explanation of how roads maintenance money is allocated. An audit would bring the light of day to this program.

Third, I believe Congress should seriously consider transferring the entire IRR program to the Federal Highways Administration. This would have to be done carefully to preserve tribal contracting authority. But transportation is the core competency of the

FHWA; it is not the Bureau's. I don't make this recommendation lightly. TCC gets along very well with the Juneau Area, and I suspect it would be easier for us to negotiate a contract with the Bureau than it would be with a new agency. But nationally, the BIA roads system is a dinosaur, which shows no willingness to change.

Thank you again for allowing me this opportunity to share my thoughts today. Congress did the right thing when it required negotiated rule-making. I hope that you will continue to exert pressure on the Bureau, or take more direct action to ensure that IRR funds are fairly distributed and efficiently used.

**SUSAN MASTEN, PRESIDENT  
NATIONAL CONGRESS OF AMERICAN INDIANS  
PREPARED STATEMENT ON  
INDIAN RESERVATION ROADS AND THE TRANSPORTATION EQUITY ACT OF THE  
21<sup>ST</sup> CENTURY (TEA-21)  
TO THE SENATE COMMITTEE ON INDIAN AFFAIRS**

OCTOBER 20, 1999

**I. INTRODUCTION**

Good morning Chairman Campbell, Vice Chairman Inouye, and distinguished members of the Senate Committee on Indian Affairs. I am Susan Masten, President of the National Congress of American Indians (NCAI), the oldest and largest Indian advocacy organization in the United States, and Chairperson of the Yurok Tribe located in the State of California. On behalf of the NCAI, I would like to thank you for this opportunity to submit, for the October 20, 1999, hearing record, this statement on Indian reservation roads and the Transportation Equity Act of the 21<sup>st</sup> Century (TEA-21).

**II. BACKGROUND**

Funding for the Indian Reservation Road (IRR) program, which funds the construction and maintenance of public roads that provide access to and within Indian reservations, Indian trust lands, restricted Indian land and Alaska Native villages, is of critical importance to Indian Country. On average, only \$500 per mile and in some cases as little as \$80 per mile is available for Indian roads maintenance. In comparison, an average of \$2,200 is spent on maintaining other federal roads, and an average of between \$2,500 and \$4,00 per mile is spent by states. The Bureau of Indian Affairs (BIA) has only been appropriated \$25 million a year for maintenance of all reservation roads in the United States. As a result of insufficient funding, many roads in Indian communities are not sufficiently maintained and most have to be shut down during the winter or become impassable during other times throughout the year. The overall health and economic viability of tribal communities is negatively affected by these deteriorating road systems.

There is an enormous need for the advancement of transportation infrastructure on Indian reservations throughout this country, especially given the fact that nearly 66 percent (66%) of the roads serving Indian communities are unpaved. These dirt or clay roads are occasionally covered with gravel, ungraded and typically found in a washboard and deeply rutted condition. On many reservations, the roads regularly turn to mud or wash out in spring and fall rains, forcing people in these areas to walk for miles to get to their homes. Also these conditions typically disrupt emergency, health care, and law enforcement services, as well as make it difficult to obtain heating fuel, food, water, and general commerce.

Any comparison of Indian roads to the rest of America's roads reveals a chronic inequity in the allocation of TEA-21 funds to the Indian Reservation Roads program. Indian reservation roads make up 2.63 percent (2.63%) of all existing roads on the federal-aid highway system; yet, Indian reservation roads have historically received less than 1 percent (1%) of the aid provided under transportation funding initiatives.

Mr. Chairman, as you are well aware, Indian reservations have a 31 percent (31%) poverty rate— the highest poverty rate in America. Furthermore, Indian unemployment is six times the national average and Indian health, education and income statistics are the worst in the country. With the implementation of welfare reform well underway, tribal government leaders are taking up the challenge of creating jobs and spurring tribal economies. However, this critical work cannot be accomplished if transportation infrastructure in Indian Country is allowed to remain in its current deplorable condition. Clearly, the funding allocation to Indian reservation roads must be dramatically increased.

### III. TEA-21's "OBLIGATION LIMITATION"

During the reauthorization of the Intermodal Surface Transportation Efficiency Act (ISTEA), NCAI and tribal governments fought hard to increase funding for Indian reservation roads and bridges. Our overall efforts resulted in an \$84 million a year increase in the IRR program under TEA-21, the new reauthorization law. Unfortunately, this increase is far less than what is needed to address the dreadful conditions on Indian reservations. While Indian country did receive this important increase under TEA-21, a new cut was imposed on IRR funding that was never seen before. TEA-21 for the first time extended the "obligation limitation" to the Indian roads allocation, resulting in a loss of about \$25 million of the \$225 million we were promised for FY98, and about \$32 million of the \$275 million we were promised in FY99. Tribes stand to lose even more in FY2000.

Under the obligation limitation, the Federal Highway Administration (FHWA) is required by TEA-21 to withhold a certain percentage of the total IRR obligation authority amount at the beginning of each fiscal year to be redistributed near the end of that fiscal year to recipients with projects that are immediately ready for funding. However, in expanding the obligation authority withholding provision to the Indian roads allocation, TEA-21 failed to expand the redistribution authority to include Indian tribes. As a result, tribes are barred from sharing in the year end redistribution; thus, money authorized and appropriated for tribal roads is diverted to states. Obviously, our member tribes view this as unfair treatment. Therefore, NCAI feels that if any funds are withheld from the IRR allocation, they should be redistributed back to the IRR program.

In years past, IRR funds were exempt from the obligation limitation, making 100% of the authorized contract authority amount available at the beginning of each year. Clearly, in passing TEA-21, Congress has contradicted its proclaimed support for IRR through the application of the obligation limitation to the IRR program. Since the obligation limitation

provision now withholds funds from tribes and states, but redistributed the withheld funds only to the states, a legislative change is necessary to exempt IRR program funds from the obligation limitation withholding. NCAI asks that this obligation limitation be removed and IRR funding restored to the 100% level as soon as possible through an amendment to TEA-21 (See Attached NCAI Resolution #VAN-99-070 and proposed amendment language).

#### IV. FURTHER INEQUITIES IN ALLOCATING NATIONAL HIGHWAY FUNDS

NCAI is also concerned with how Congress and the Administration distributes the overall national highway trust funds. When TEA-21 was being debated, it was recognized that Indian reservation roads make up 2.63% of all existing roads eligible for TEA-21 funding. However, under TEA-21 Indian tribes receive less than 1% of TEA-21 funding for these roads. If tribes were to receive their full pro-rata share of the billions included in TEA-21, Indian reservations would have received \$4.7 billion instead of the \$1.6 billion over the six-year period covered under TEA-21. Mr. Chairman, your assistance in increasing the national allocation to Indian country would be very much appreciated.

Also, the 1% set aside that amounted to about \$13 million in additional funding for Indian bridge rehabilitation and replacement in ISTEA was removed from TEA-21 and Indian bridge funding now must come out of the IRR funding. The loss of this extra \$13 million in highway bridges set aside funding results in a net loss to the IRR program of \$39 million. While we are grateful for the increases in funding under TEA-21, the obligation limitation, the loss of the bridge set aside funding, and other net losses has resulted in a mere \$12.4 million increase to the IRR construction program. Such a small increase is unacceptable in light of the current need in Indian country. Mr. Chairman, the Committee's assistance in correcting these critical shortfalls would also be appreciated.

#### V. CONCLUSION

Mr. Chairman, efficient roads are vital to most aspects of life on Indian lands including activities such as economic development, attending school, obtaining health care, and transporting people from welfare to work. During recent deliberations over the FY2000 transportation spending bill, Senator Domenici served as a strong advocate in calling for the full \$289.5 million in funding for the IRR program despite the obligation limitations imposed under TEA-21. However, while the Senator's efforts were applauded by Indian country, NCAI feels that TEA-21 should be amended to ensure that the IRR program is fully funded every year. Furthermore, NCAI would ask that the Committee fully consider the testimony provided by tribal leaders during this hearing. Their observations and suggestions with regard to the Negotiated Rulemaking Committee mandated by TEA-21 and the BIA's implementation of the Pub. L. 93-638 provisions of TEA-21 are reflective of many of the concerns raised by our member tribes. Mr. Chairman, thank you once again for this opportunity to provide this statement.

## NATIONAL CONGRESS OF AMERICAN INDIANS

THE NATIONAL CONGRESS OF  
AMERICAN INDIANS

## RESOLUTION # VAN-99-070

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*Medford, Oregon & Arizona*

**Title: Recommending Removal of the Obligation Ceiling Limitation Requirement for the Indian Reservation Roads Program From The FY2000 and Subsequent Department of Transportation Appropriations Acts**

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, all rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national Indian organization, established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI.

WHEREAS, transportation impacts virtually every aspect of a community such as economic development, education, healthcare, travel, tourism, planning, land use and employment opportunities; and

WHEREAS, the Affiliated Tribes of Northwest Indians is aware that the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) has been signed into law by the U.S. President and limits the obligation of Indian Reservation Road (IRR) funding to 90%; and

WHEREAS, the obligation ceiling limitation thus far has eliminated over \$58 million from the IRR program, which will lose another \$31 million if the limitation is not removed in the FY 2000 Appropriations Act; and

WHEREAS, this limitation is inconsistent with all prior transportation acts, and seriously impacts the ability of Indian Tribes and the Bureau of Indian Affairs to provide the American Indian people with safe and decent access to health care, education, employment, tourism, and economic development.

NOW THEREFORE BE IT RESOLVED, that NCAI does hereby draft a Technical Amendment in consultation with tribes and advocate for its' passage with the U.S. Congress to remove the obligation limitation contained in TEA-21 for Transportation Appropriations Acts.

#### CERTIFICATION

The foregoing resolution was adopted at the 1999 Mid-Year Session of the National Congress of American Indians, held at the Vancouver Trade and Convention Center, in Vancouver, British Columbia, Canada on July 20-23, 1999 with a quorum present.

  
W. Ron Allen, President

ATTEST:

  
Lela Kaskalla, Recording Secretary

Adopted by the General Assembly during the 1999 Mid-Year Session held at the Vancouver Trade and Convention Center in Vancouver, British Columbia, Canada on July 20-23, 1999.



Proposed Tribal Amendment to TEA-21, P.L. 105-178, as amended by P.L. 105-206

At the appropriate place, insert:

**SEC. 1. SHORT TITLE.**

This Act may be cited as the "TEA 21 Technical Amendments Act".

**SEC. 2. TECHNICAL AMENDMENT.**

"Section 1102(b) of the Transportation Equity Act for the 21<sup>st</sup> Century is amended—

(a) in paragraph (7) by striking "and" after the semi-colon;

(b) in paragraph (8) by striking ".\*" and inserting in its place "; and"; and

(c) by adding a new paragraph at the end thereof — "(9) under section 1101(a)(8)(A) of this Act."

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**Purpose and effect of technical amendment.**

Indian reservation roads and bridges are some of the worst in the Nation. Many Native American communities are connected to vital centers for health care, jobs, education, goods and services only via unpaved and weather-compromised roads. Individual Indians in remote reservations typically travel long distances by car, and consequently pay a disproportionately higher share of the federal fuel taxes that support the Highway Trust Fund.

In FY 1998, TEA-21 allocated \$225 million for Indian reservation roads. But for the first time, an obligation limitation was imposed on the Indian reservation roads account, resulting in \$24.17 million of this \$225 million being diverted to non-Indian communities. In FY 1999, TEA-21 allocated \$275 million for Indian reservation roads and bridges. \$31.7 million of this \$275 million was diverted to non-Indian communities because of the obligation limitation requirement.

The proposed technical provision would amend TEA-21 to add the Indian reservation roads and bridges program to the list of programs which are statutorily excluded from the obligation limitation for the duration of TEA-21. It would have the effect of providing to Indian reservation roads and bridges the full amount of FY 2000 funds (\$275 million) allocated to Native American communities under TEA-21 as Congress originally intended.

## AT LARGE

Joan Tabor Allen

Reva Gates

Pat McLaughlin

Miley McAllister

Rita Brown Otter

Joan Day Smith, Jr

Tom Iron  
Vice ChairmanElsie McLaughlin  
Secretary

## DISTRICTS

Robert Cordova  
Cannonball DistrictRaymond Ben Walker  
Fort Yates DistrictJoe Strong Heart  
Wakpala DistrictPalmer Delander  
Renville DistrictDean Bear Rife  
Bismarck DistrictMelvin Brown Otter  
Bismarck DistrictJames Lang Chao  
Little Eagle DistrictRandall White Sr.  
Pierpont District

TESTIMONY OF  
CHARLES W. MURPHY, CHAIRMAN  
STANDING ROCK SIOUX TRIBE  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS'  
OVERSIGHT HEARING ON THE  
INDIAN RESERVATION ROADS PROGRAM AND  
THE TRANSPORTATION EQUITY ACT FOR THE 21st CENTURY  
OCTOBER 20, 1999

## I. Introduction

I am Charles W. Murphy, Chairman of the Standing Rock Sioux Tribe. I would like to thank the Committee for the opportunity to submit this testimony on behalf of the Tribe. The Standing Rock Reservation consists of more than 847,000 acres in the States of North Dakota and South Dakota and a population of almost 9,000 people.

The Tribe has four main concerns that we would like to highlight and urge Congressional action:

- ♦ Obligation Limitation The Tribe urges the Committee to work to enact technical amendments to TEA-21 to correct the obligation limitation problem. Indian tribes lost roughly \$25 million in FY 1998 and roughly \$32 million from their FY 1999 allocation. Millions more will be lost in FY 2000 and in the following years if this is not corrected.
- ♦ Highway Safety Highway Safety is the Tribe's highest priority. The Tribe strongly believes that preventative highway safety activities are critical to saving our tribal members' lives. As you know, death as a result of automobile crashes is one of the highest causes of mortality in Indian country. A significant number of those fatalities and injuries are directly related to the terrible conditions of our roads. Additional resources must be directed at highway safety programs.
- ♦ Funding Distribution The answer to the severe underfunding of some tribal programs is not to take money away from an already underfunded program, whose needs are also not being met. The answer is to bring up the level of funding for those tribes that are facing severe underfunding. However, Congress must ensure that the existing funding levels for tribal IRR programs are not reduced.

- ◆ **FHWA Assumption of the IRR Program.** The Standing Rock Sioux Tribe opposes moving the IRR program to the FHWA. The BIA Roads program has the ability and the expertise to administer the IRR program. A transition to another federal agency would not improve what we view as bureaucratic problems that would be a part of any federal agencies' oversight of this program. The solution is for Congress to be vigilant in its oversight of this program and ensure that the BIA carries out its obligations as required by law.

## II. Additional Discussion

### A. Overwhelming Need

The IRR road system consists of more than 50,000 road miles. Nearly everyone agrees this figure is significantly understated because of the lack of an updated and adequate IRR roads inventory system. However, even using this admittedly low figure, it is estimated that tribal roads constitute 2.63% of all public roads eligible for TEA-21 funding. Yet, the IRR program receives less than 1% of TEA-21 funds for its entire operation, whether for transportation planning, road design, road construction or simple administration of the IRR program.

IRR maintenance funding is as bad, if not worse, than the IRR construction funding situation. The BIA receives only \$25.5 million per year for IRR road maintenance. Mr. Robert Baracker, testifying for the BIA, noted that this figure works out to be less than \$500 per year for each mile of BIA-owned road, compared to \$4,000 to \$5,000 per mile of road spent annually by most state transportation departments to maintain state roads. The BIA estimates that \$100 million per year is needed to maintain BIA owned roads adequately. Increased funding for IRR road maintenance is not only the *fair* thing to do. It is the *smart* thing to do. It is not difficult to recognize that it is unwise to spend millions of dollars in federal funds to construct IRR roads and bridges only to see them fall into disrepair and lose years of useful life due to a lack of adequate maintenance. The current \$25.5 million dollar appropriation for IRR road maintenance must be increased.

### B. Obligation Limitation and Bridge Set-Aside

Congress must amend TEA-21 to correct the obligation limitation applicability to the IRR Program. While TEA-21 increased the authorized federal funding for the IRR program from \$190 million per year to \$275 million per year, it also made "obligation limitation" applicable to IRR funds for the first time.

Briefly, the "obligation limitation" requires the FHWA to withhold a certain percentage of FHWA program funds authorized to be spent from the Federal Highway Trust Fund so that they can be redistributed to high priority FHWA projects or eligible program participants at the end of the fiscal year. Some federal highway programs, such as the Emergency Relief Program and the Minimum Guarantee Program, are statutorily exempt from this process. Unfortunately, TEA-21 did not continue the IRR program's traditional exemption from the obligation limitation. By all

accounts, this highly significant and *costly* change to the IRR program was not a deliberate policy choice by Congress; rather, it was a simple drafting oversight. Compounding this error, TEA-21 does not include Indian tribes among the list of FHWA program participants eligible to receive redistributed highway funds withheld under the obligation limitation.

Additionally, TEA-21 eliminated the state pass through program for reservation bridges, and rolled the Indian Bridges funding into the IRR program. Prior to the enactment of TEA-21, tribes were receiving \$13 million to address their bridge needs through the State pass through program.

Thus, while it appears that the IRR authorization level was increased by \$85 million per year, it was, in fact, increased by only \$72 million, because \$13 million of the increase was already available to tribes under the other program.

Moreover, because of the obligation limitation, the total increase for the IRR program is actually only \$40 million a year. Thus, it is critical that the Committee work to enact technical amendments to TEA-21 to correct these critical funding issues.

#### **C. TEA-21 Negotiated Rulemaking Committee**

We strongly support the TEA-21 Negotiated Rulemaking process. Mr. Pete Red Tomahawk, the Tribe's Tribal Transportation Director, serves as a Tribal Co-Chair on this important committee. While it took the BIA ten months to convene the first negotiated rulemaking meeting, since that time the Committee has made significant progress towards its final goals. We have been impressed with the level of knowledge of the tribal leadership and the willingness of tribal governments to offer the services of their program staff to provide critical technical assistance to the Committee. We have also been impressed by the commitment of the tribal leadership to this process and to improving tribal transportation programs. The Committee has held meetings in every region of the country and heard from numerous tribal leaders who traveled using their own scarce resources to be a part of the process. This is a testament of tribal government support for this process.

#### **D. Administrative Funds**

We appreciate Chairman Campbell's request for a GAO study of the BIA's use of the 6% administrative funds and inquiring into the BIA's statutory authority to deduct additional "projected related" costs to manage the IRR program. How the BIA uses these funds and whether they are being used to the benefit of tribal roads programs is of significant concern to the Standing Rock Sioux Tribe.

### **III. Conclusion**

On behalf of the Standing Rock Sioux Tribe, I would like to thank you for the opportunity to provide this testimony on this important issue. We look forward to working with the Senate Committee on Indian Affairs to identify and address the transportation needs of all Indian tribes.



Crow Country

## CROW TRIBAL COUNCIL

P.O. Box 159  
Crow Agency, Montana 59622  
(406) 638-2601

CLARA NOMEZ, MADAM CHAIRMAN  
JOSEPH PICKETT, VICE-CHAIRMAN  
DENNIS BIG HAIR, SECRETARY  
CORNELIUS LITTLE LIGHT, VICE-SECRETARY

October 26, 1999

BEN NIGHTHORSE CAMPBELL, CHAIRMAN  
UNITED STATES SENATE  
COMMITTEE ON INDIAN AFFAIRS  
HART SENATE OFFICE BUILDING, ROOM 838  
WASHINGTON, D.C. 2020510-6450

RE: INDIAN RESERVATION ROADS AND THE TRANSPORTATION  
EQUITY ACT OF THE 21<sup>ST</sup> CENTURY  
(TEA-21)

DEAR SENATOR NIGHTHORSE CAMPBELL:

FOLLOWING IS THE STATEMENT OF THE CROW TRIBE, CROW  
AGENCY, MONTANA:

STATEMENT OF THE CROW TRIBE REGARDING THE INDIAN  
RESERVATION ROADS AND THE TRANSPORTATION EQUITY  
ACT OF THE 21<sup>ST</sup> CENTURY (TEA-21)

The Crow Indian Reservation, a federally recognized rural reservation is located on 2.6 million acres of land in Southeastern Montana. Primarily located in Big Horn County, which has no urban population and has 20,000 inhabitants or more. The reservation is home to approximately 7,153 Tribal members. There are basically six districts where primarily residents reside: Wyola, Lodge Grass, Crow Agency, Big Horn, Pryor and Black Lodge.

The BIA, IRR inventory for the Crow reservation resulted in a total of 768.1 miles. This total does not include 20.0 miles of various classes of proposed roads. Of this total, 516.4 are on the BIA system, 137.0 are on the State Highway system, and 114.7 miles are on the County system.

The Crow Tribe, in cooperation with the Bureau of Indian Affairs, has determined which roads should be in the BIA Indian Reservation Road (IRR) Inventory. The overall result of the inventory mileage by surface type for Phase I at the Crow Reservation is 771.1 total miles in the BIA, IRR Inventory. There are 516.4 miles on the BIA Road System. Of these, 102.4 miles are paved, 48.3 miles are gravel, 120.2 miles are grade and drain and 245.5 miles are unimproved.

As you can see, the Crow Tribe has made some accomplishments on the reservation. Employment on the reservation of Tribal members is very important as there is a very high unemployment rate. The BIA helps some in this area by using Force Account Construction using qualified Tribal members. During construction season, approximately 27 people are employed at a rate of average \$20 per hour with 40 hour weeks.


Our Federal share of the TEA-21 allocation is severely cut back by the impact of the Obligation Limitation imposed by Congress. It is firmly believed that the Obligation Limitation should be seriously looked at by Congress and the Indian Reservation Roads should not fall under this limitation. We believe that the Trust Responsibility to American Indians should fall into this category whereby we should not be responsible for the debt the United States falls into. Our Reservations are the most neglected and poor in the United States and being the first citizens of the land we should be first in receiving priority assistance. Our roads and private lanes are in dire need of improvement. Our sick and elderly, need to have good reasonable access to receive medical, educational and food provisions.

The Crow Tribe realizes that the final Federal Regulations upon approval by Congress will be the Law. We, the Crow Tribe, request that Congress seriously look at the impact of the Obligation Limitation has on IRR Funding.

The Montana/Wyoming Tribal Chairmen's Association, of which the Crow Tribe is a member has issued resolutions and a copy is being attached which address the Large land based and large population tribes in Montana and Wyoming interests.

The Crow Tribe extends their appreciation to the Senate Committee on Indian Affairs, who ensures the best interests of the American Indian people of the United States. We feel sure that you will take into account all Tribal Comments and support us in our needs and recommendations.

Sincerely,

  
Clara Nomee  
Crow Tribal Chairman

Enclosures



# **Montana-Wyoming Tribal Leaders Council**

207 North Broadway, Suite BR-2, Billings, MT 59101-1951  
Phone (406) 252-2550 Fax (406) 254-6355 WWW <http://mtc.wtp.net>

Resolution: 99-\_\_\_\_\_

## **A RESOLUTION IN SUPPORT OF THE ELIMINATION OF THE "OBLIGATION LIMITATION" FOR THE INDIAN RESERVATION ROADS PROGRAM IN TEA 21**

**WHEREAS**, The Montana-Wyoming Tribal Leaders Council (MWTLC) has been created for the expressed purpose of providing the Federally Recognized Tribes of Montana and Wyoming with a unified and collective organization and voice to address common issues concerning Indian people and Tribal Governments and to pursue resolutions pertaining to those concerns; and,

**WHEREAS**, the Montana-Wyoming Tribal Leaders Council is aware that the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) has been signed into law by the U.S. President and subject the Indian Reservation Roads (IRR) funding to an obligation limitation established annually in the Department of Transportation appropriations bill; and,

**WHEREAS**, the Obligation Limitation thus far has eliminated over \$58 Million from the IRR program and will reduce it by an additional \$32 Million if the limitation is not removed in the FY-2000 appropriations act; and,

**WHEREAS**, this limitation will further reduce the IRR Program by an additional \$90 million if not removed in fiscal years 2002 and 2003; and

**WHEREAS**, this limitation is inconsistent with all prior Transportation Acts and seriously impacts the ability of Indian Tribes and the Bureau of Indian Affairs to provide American Indian people with safe and decent access to health care, education, employment, tourism, and economic development; now,

**THEREFORE BE IT RESOLVED** that the Montana-Wyoming Tribal Leaders Council hereby requests the U.S. Congress and U.S. Senate remove the obligational limitation contained in TEA-21 for the IRR program in its deliberations for the FY 2000 and subsequent Department of Transportation Appropriations Acts.

### **CERTIFICATION**

I, the undersigned, as Chairman of the Montana-Wyoming Tribal Leaders Council certify that the forgoing resolution was duly presented and passed by a vote of 8 for; 0 opposed; and 0 not voting, at a regularly called and duly convened meeting of the Council held this 19<sup>th</sup> of August, 1999.

ATTEST:

  
Secretary, MT-WY Tribal Leaders Council

  
Chairman, MT-WY Tribal Leaders Council





## Montana-Wyoming Tribal Leaders Council

207 North Broadway, Suite BR-2, Billings, MT 59101-1951  
Phone (406) 252-2550 Fax (406) 254-6355 WWW: http://mlc.wyo.net

Resolution: 99-\_\_\_\_\_

### A RESOLUTION IN SUPPORT OF A RECOMMENDATION OF THE DISTRIBUTION FUNDING FORMULA FOR TEA-21

**WHEREAS**, The Montana-Wyoming Tribal Leaders Council (MWTLC) has been created for the expressed purpose of providing the Federally Recognized Tribes of Montana and Wyoming with a unified and collective organization and voice to address common issues concerning Indian people and Tribal Governments and to pursue resolutions pertaining to those concerns; and,

**WHEREAS**, the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) has provided only a modest increase in Indian Reservation Road funding after the reductions of about \$30 Million for obligation limitation and the \$13 Million for the bridge program, leaving about \$217 Million available for distribution to Indian Tribes; and,

**WHEREAS**, the Indian Reservation Roads (IRR) Negotiated Rulemaking Committee has been charged with the task of developing a new distribution formula for the IRR funds; and,

**WHEREAS**, many issues need to be taken into consideration in order for a fair and equitable distribution method (to be developed) such as a clearly defined road systems with specific criteria which determines how the road system will be established, which roads it will include and how the system will be maintained and updated and roads must be inventoried to determine and relative need and the inventory must be uniform, standardized, reproducible and verifiable and updates must be verified and certified; and,

**WHEREAS**, developing a new distribution formula is going to be a time consuming and difficult task given that each Indian Tribe has its own needs and are at varying stages of their transportation improvement system; and

**WHEREAS**, an option for the IRR Negotiated Rulemaking Committee is to freeze the distribution funding formula allocation to each Area at the 1999 funding level for fiscal year 2000 through 2003; and,

**WHEREAS**, this would provide an opportunity for each Area to continue a variable construction program and would avoid pitting Tribe against Tribe and this would allow the Negotiated Rulemaking Committee to develop a new formula and openness, fairness, and without being constrained by pressure from their constituents to increase funding levels for their specific area; now,

**THEREFORE BE IT RESOLVED** that the Montana-Wyoming Tribal Leaders Council supports the recommendation to freeze the distribution funding formula for the Indian Reservation Roads Program to each Area at the FY 1999 funding level for fiscal years 2000 through 2003 so the Negotiated Rulemaking Committee can develop a fair and equitable formula for all Tribes and reservations.

Resolution 99-\_\_\_\_  
Page 2

CERTIFICATION

I, the undersigned, as Chairman of the Montana-Wyoming Tribal Leaders Council certify that the forgoing resolution was duly presented and passed by a vote of 8 for, 0 opposed, and 0 not voting, at a regularly called and duly convened meeting of the Council held this 19<sup>th</sup> of August, 1999.

ATTEST:

  
Secretary, MT-WY Tribal Leaders Council

  
Chairman, MT-WY Tribal Leaders Council

COMMENTS OF  
SAMUEL N. PENNEY

CHAIRMAN, NEZ PERCE TRIBAL EXECUTIVE COMMITTEE  
NEZ PERCE TRIBE

ON  
INDIAN RESERVATION ROADS AND THE TRANSPORTATION EQUITY ACT  
IN THE 21<sup>ST</sup> CENTURY (TEA-21)

On behalf of the Nez Perce Tribe, I would like to thank the Senate Committee on Indian Affairs for this opportunity to provide comments on TEA-21, the Negotiated Rulemaking process and its importance to transportation programs for Indian people.

As you have heard from others, the Funding Formula Workgroup of the Negotiated Rulemaking Committee has been unable to reach consensus on the fairest way to distribute funds under the Indian Reservation Roads program. Smaller tribes, such as the Nez Perce, believe that it is crucial that a new formula provide a more equitable distribution of available funds. The current formula is weighted towards funding for large tribes with an existing BIA road infrastructure, and the Nez Perce as well as many other smaller tribes have been left out as a result.

We also would like to point out that TEA funding may—and should—be used for transportation assistance for immediate and long range transportation needs, not just for road construction and maintenance. In the Nez Tribe our transportation department hopes to use funds for public transit programs, for scenic byways, for rail-to-trail projects, among others. It is important, as we enter the next millennium, to view transportation funding as a means for much more than road and bridge construction but as a means to enhance the quality of life, safety, health, education and economic development for the Nez Perce people. Unfortunately, the BIA has often directed the funding only for upgrading its roads, even though we can find many other effective and creative uses for this money in support of all modes of transportation.

The Nez Perce Tribe would also like to point out that substantial administrative overhead costs to the TEA program could be saved by maintaining these funds at the federal level and having Tribes apply directly to the federal program for funding, rather than routing the money to the states where additional overhead costs are charged to the funding amounts.

One particularly important need of the Nez Perce Tribe is for funding to support transportation planning. The Nez Perce Tribe has received only a small amount of transportation monies for inventorying road transportation resources and some planning activities, and this

amount was inadequate for the job. A Nez Perce Tribe Transportation Plan should have been updated every five years by the BIA, but our last transportation and road inventory was completed in 1988. Twelve years without an inventory has left us with a huge updating task. Additionally, a national road inventory should be completed in order for all tribes' needs to be clearly documented and TEA-21 funds applied appropriately.

The BIA's use of its "6 percent management funds" from the IRR budget also has caused concern on our reservation. We would like to see a full accounting by the BIA of what management activities this money supports. If a tribe assumes a management role in a transportation project, the tribe should receive this money for its management activities. It is our experience that, even though a tribe may take management responsibility for a project, it does not necessarily receive the management funds it needs to carry out that responsibility.

The Nez Perce Tribe would like to see some portion of TEA 21 funding set aside for the needs of small tribes. Given the significant inequities in past funding—because of the current formula—small tribes have been unable to construct and maintain a badly-needed infrastructure of roads and bridges. A set aside would help to address this ongoing problem, and to help make up for years of extremely limited funding—or no funding at all—for small tribes.

Section 1102 of TEA-21 requires that approximately 10 percent of the Federal Lands Highways Program is redistributed to states for surface transportation projects. Holding back this so-called "Obligation Limitation" money for states deprives the IRR budget of significant funds which are desperately needed by Indian tribes. Last year alone, \$32 million was removed from the IRR budget, which in total was only \$275 million. The Nez Perce Tribe urges elimination of the "Obligation Limitation" set-off for states. Obligated monies should go to tribes and their transportation departments, not sent to the state or the BIA for decisions on how those funds should be sent.

Another major concern for the tribe is a lack of funding for bridges, due in part to the Federal Highway Administration's failure to distribute Bridge Replacement funding. The FHWA has withheld \$13 million last year and apparently will withhold the same amount this year, amounting to \$26 million which tribes could use to repair and replace dilapidated and even dangerous bridges. It is unconscionable to allow this fund to build up when there are so many obvious and critical needs for it.

The Nez Perce Tribe appreciates this opportunity to voice its concerns about TEA-21, negotiated rulemaking, and other issues related to federal funding of roads and bridges on Indian reservations. The Tribe urges this Committee to take all appropriate steps to assure that a more equitable funding formula is devised, that some set aside funds are made available to smaller tribes, that the "Obligation Limitation" funding mechanism is eliminated, and that Bridge Replacement money is immediately made available to tribes. Thank you for your attention to these important matters.

TESTIMONY OF DUANE JIM RAY, PRESIDENT OF  
THE SENECA NATION OF INDIANS ON THE  
INDIAN RESERVATION ROADS PROGRAM AND  
THE TRANSPORTATION EQUITY ACT FOR THE 21st CENTURY  
BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE  
OCTOBER 20, 1999

I am Duane Jim Ray, President of the Seneca Nation of Indians. The Seneca Nation appreciates this opportunity to submit testimony for the record in the hearing held on October 20 by the Senate Committee on Indian Affairs regarding the Indian Reservation Road program ("IRR") and the Transportation Equity Act for the 21st Century ("TEA-21").

The Seneca Nation is pleased that this Committee continues to seek innovative ways to improve and strengthen the IRR program. The safety of Seneca families, our children and our Elders, continues to be at risk by the lack of adequate construction and maintenance funding for our road and bridge systems. As Chairman Campbell noted during the October 20 hearing, proper construction and maintenance of tribal roads and bridges is an absolute prerequisite to long-term, sustained economic development in Indian country. Tax incentives, HUB zones and job training programs cannot succeed in fostering and strengthening business development in impoverished Indian communities if businesses must contend with unpaved roads and unsafe bridges to provide services or get their products to market.

**Funding Equity for the IRR Program.** This Committee has already received testimony from many tribal leaders, transportation experts, the Bureau of Indian Affairs ("BIA") and the Federal Highway Administration ("FHWA") regarding the IRR program and TEA-21. Despite areas of disagreement, one constant fact emerges from this testimony -- the IRR program is badly underfunded and has been for decades. Further compounding this problem is the fact that the IRR program is *unfairly* funded.

The IRR program receives a disproportionately smaller share of federal dollars than other federally funded roads. Based on available information, we know that the IRR road system consists of more than 50,000 road miles. This figure, however, significantly understates the number of road miles on Indian reservations, as there has not been an updated and adequate IRR roads inventory. But even using this figure, while tribal roads are estimated to constitute 2.63% of all public roads eligible for TEA-21 funding, the IRR program receives less than 1% of TEA-21 funds for its entire operation -- whether for transportation planning, road design, road construction or simple administration of the IRR program.

The situation is as bad, if not worse, for IRR maintenance funding. The BIA receives only \$25.5 million dollars per year for IRR road maintenance. As the BIA reported, this is less than \$500 per year for each mile of BIA-owned road. The BIA compared this \$500 figure to \$4,000 to \$5,000 per road mile spent annually by state transportation departments to maintain state roads and estimated that \$100 million dollars per year is needed to maintain BIA-owned roads adequately. In fact, recent figures from the Cornell University Roads Program place annual road maintenance funding at much higher levels for state and local governments -- \$4,900 per mile for municipal transportation departments and \$11,000 per mile for state transportation departments. In contrast, the Seneca Nation receives only \$24,100 in annual IRR maintenance funding to care for 56 miles of IRR roads on its three Reservations, only \$430 per road mile.

Increased funding for IRR road maintenance is essential. It simply makes no sense to spend millions of dollars to construct roads and bridges only to see them fall into disrepair and lose years of useful life due to a lack of adequate maintenance. The current \$25.5 million dollar appropriation for IRR maintenance is woefully inadequate. Without an increase in funds for regular road maintenance, we will -- in the long run -- end up spending much more to rehabilitate and replace these roads.

The lack of adequate funds for Indian Reservation roads creates a serious health and safety problem for over 7,000 Seneca Nation tribal members. We have had numerous traffic accidents including many serious injuries and fatalities on our Reservations over the last several years. The unmet transportation needs on our Allegany, Cattaraugus and Oil Spring Reservations are enormous. The Seneca Nation has been seeking funding for some of its highest priority road construction projects for well over a decade. Snow removal is a critical health and safety concern in our area. Unfortunately, the paltry maintenance funds we receive are wholly insufficient to perform this task safely or adequately.

Compounding this problem is the fact that the Seneca Nation often has difficulty persuading the State of New York and the local governments in our area to maintain properly the non-BIA owned roads serving our Reservations. The State and local governments often choose to fund road maintenance projects closer to non-Native areas.

As a tribal leader who must develop and work within realistic budgets, I understand there is not always enough money to pay for every necessary project or program. However, the First Nations of this great country deserve, at a minimum, simple fairness and equity in federal transportation funding. Our tribal members contribute tax money to the Federal Highway Trust Fund with every gallon of gas they put in their cars. They are entitled to receive their fair share of federal transportation dollars in return.

The Seneca Nation urges Congress to increase funding for the IRR program to, at a minimum, 2.63% of the TEA-21 appropriation. This funding increase is necessary to place IRR roads on the same financial footing as other public roads under TEA-21.

**Obligation Limitation and the 1% Bridge Program Set Aside.** There is a measure which Congress can take immediately to help reduce the IRR funding shortfall. We urge Congress to amend TEA-21 to correct what appears to have been two unintended changes to the IRR program which resulted from passage of the Act.

*First*, TEA-21 made the so-called "obligation limitation" applicable to IRR funds for the first time. The "obligation limitation" requires the FHWA to withhold a certain percentage of FHWA program funds authorized to be spent from the Federal Highway Trust Fund so that they can be redistributed to high priority FHWA projects or eligible program participants at the end of the fiscal year. Some federal highway programs, such as the Emergency Relief Program and the Minimum Guarantee Program, are statutorily exempt from this process. The IRR program has traditionally been exempted from the obligation limitation. Unfortunately, however, TEA-21 did not continue this exemption for the IRR program. This is a very significant and costly change to the IRR program which -- from all information -- was not a deliberate policy choice by Congress. Compounding this error, TEA-21 does not include Indian tribes among the list of FHWA program participants eligible to receive redistributed highway funds withheld during the obligation limitation process.

Because of this, millions of dollars of IRR funding is now withheld from Indian tribes and redistributed to states or other eligible recipients every year. For example, in FY 1998, Indian tribes lost roughly \$25 million from the \$225 million dollar IRR funding allocation. In FY 1999 tribes lost approximately \$32 million. If this oversight is not corrected, millions more will be lost to tribes in future years. The Seneca Nation appreciates Senator Wellstone's comments at the oversight hearing which recognized that the problem was created by Congress and must be fixed by Congress.

*Second*, TEA-21 eliminated the 1% funding set-aside for the Indian Bridges program and required that future funding for the rehabilitation and replacement of bridges in Indian country come from within the IRR program itself. The effect of this change was a \$13 million dollar funding reduction to the IRR program every year. During the term that ISTEA was in effect, from FY 1991-1997, the Seneca Nation directly benefitted from the Indian Bridges program because it brought critically needed bridge construction, rehabilitation and replacement to our area. With the loss of the Indian Bridges program, we are deeply concerned that these critically-needed bridges will once again fall into disrepair and become unsafe.

These two statutory changes in TEA-21 combine to result in \$45 million dollars in IRR program funding *reductions* on an annual basis, well over half the \$85 million dollar in annual funding *increases* Indian tribes thought they would receive when TEA-21 was first enacted.

The Seneca Nation urges this Committee to work to enact technical amendments to TEA-21 as soon as possible to restore funding for the Indian Bridge program and to stop the diversion of IRR funds away from Indian country, where it was first intended and is so critically needed. The Seneca Nation also calls on Congress to restore the IRR funding lost in prior fiscal years due to these changes caused by TEA-21, as it was first enacted.

**TEA-21 Negotiated Rulemaking Committee.** The Seneca Nation of Indians fully supports the work of the TEA-21 Negotiated Rulemaking Committee. Our own Transportation Manager, Ms. Jody Clark, ably serves as a tribal representative for the Eastern Area on the Rulemaking Committee and also serves on the TEA-21 Policy Workgroup. As other witnesses testified during the October 20 hearing, tribal representatives on the Committee were greatly frustrated early on in the process, both by the time it took for the BIA and FHWA to get the Committee up and running and by the BIA's initial reluctance to sign the rulemaking protocols. However, we are very pleased that the Committee is moving forward with the important tasks assigned to it by Congress, and the Seneca Nation is committed to seeing the rulemaking process completed as fairly and as expeditiously as possible.

I understand that productive drafting of IRR program regulations and good faith bargaining is proceeding in most Workgroups and on most issues. I am also aware of three areas of significant disagreement which we wish to bring to the Committee's attention. I briefly address each in turn.

1. *Relative Needs Funding Formula.* Many witnesses have testified about the Committee's current difficulty in developing a new "relative needs" funding formula. The reason the issue is so hard to resolve is plain. Indian tribes have been asked to do the politically and practically impossible -- divide funding that is woefully inadequate to begin with. It is simply impossible to ask elected tribal leaders to give up scarce IRR funding to other tribes voluntarily when the unmet transportation needs of their own tribes are so great.

We are certain that all tribal governments, large and small, wish to see other tribes be in a position to meet the transportation needs of their people. But, as stated above, the first and best answer to the problem is to increase IRR funding to reflect a fairer



percentage the total TEA-21 allocation so that *all* tribal governments can do this. Without adequate funds, no allocation among the tribes will be sufficient to meet the needs of any tribe.

2. *BIA's "Not to Exceed 6%" Administrative Funds.* The Seneca Nation wholeheartedly approves of Chairman Campbell's October 29, 1999 letter to the Comptroller of the United States asking that the Government Accounting Office ("GAO") conduct a study accounting for the BIA's use of the 6% administrative funds and inquiring into the BIA's statutory authority to deduct additional "projected related" costs to manage the IRR program. The Seneca Nation has become increasingly concerned about the amount of IRR funds the BIA retains for IRR program management expenses and the actual uses it makes of these funds.

Indian tribes fought hard for the statutory changes in TEA-21 precisely because the BIA and FHWA repeatedly frustrated their efforts to enter into self-determination contracts under the IRR program. As our attorneys have advised us, the statutory changes in TEA-21 make clear that tribes have a right to receive an equitable share of these 6% funds to administer their own tribal IRR projects and programs under self-determination contracts, if they so choose. Tribes expect both accountability from the BIA *and* a fair share these 6% administrative funds. The same can be said for the FHWA's use of its "not to exceed 1.5%" of IRR funds to cover its own administrative costs.

Unfortunately, BIA and FHWA negotiators on the TEA-21 Rulemaking Committee have displayed no flexibility on the 6% issue so far in the negotiations. Despite the clear statements in the law, the BIA has indicated no willingness to part with *any* of the 6% funds. The BIA has even suggested it is entitled to continue withholding the "project related" program management costs *in addition to* the 6% funds. As Chairman Campbell indicated in his comments to the BIA and in his October 29 letter to the Comptroller, no statutory support exists for the BIA's position.

Chairman Campbell's request for a GAO study is a positive step toward BIA accountability on the 6% funding issue. We would also recommend that the GAO study be expanded to include the FHWA's use of its "1.5%" administrative funds. This information will help the Committee, members of the TEA-21 Negotiated Rulemaking Committee and tribal governments around the country evaluate whether the BIA and FHWA are withholding excessive amounts of IRR funds for their own administrative purposes.

In addition, we seek this Committee's support in convincing Assistant Secretary Gover to change the BIA's current position on the 6% funding issue both during the TEA-21 rulemaking process and in contract negotiations with individual tribal governments. The presumption must be that *all* IRR funds are available, in the first instance, to the Indian tribes themselves according to their own "relative need" funding allocation. The BIA and FHWA must provide a clear and compelling reason for withholding *any* IRR funds, including 6% administrative funds, from tribes wishing to operate IRR projects or programs under contracts. All IRR funds should be made available to tribes for contracting purposes, as required by law.

3. Advance Payment of IRR Funds. A similar problem exists with the FHWA's recently announced position on the availability of advanced funding for tribes operating IRR projects or programs under self-determination contracts. Tribal governments fought hard for language in TEA-21 which makes clear that "[n]otwithstanding any other provision of law or any interagency agreement or program guideline, manual or policy directive," *all* IRR funds must be made available to Indian tribes "in accordance with" the ISDEAA. See TEA-21 section 1115.

As our attorneys advise us, Title IV of the ISDEAA requires that self-governance compacts and annual funding agreements "*shall provide for advance payments to the tribes in the form of annual or semi-annual installments at the discretion of the tribes.*" 25 U.S.C. 458cc(g)(2). The self-determination regulations also plainly require that the BIA provide advance funding to tribes performing construction contracts on *at least* a quarterly basis. See 25 C.F.R. 900.132. In other words, quarterly advance payments are the *minimum amounts* authorized by law for self-determination construction contracts, but the BIA and contracting tribes are free to negotiate an advance payment schedule on terms even more favorable to the tribes. We understand that several tribes around the country have received large lump sum advance payments for IRR road construction projects and have used these funds prudently and appropriately.

Further, it makes sense to transfer scarce IRR funds into an Indian tribe's special IRR program account as soon as possible so that the money can begin drawing interest, and the tribe can better manage IRR planning, design, construction and maintenance activities. There are already many statutory and accounting protections in place, up to and including the threat of criminal prosecution, which would prevent a tribe from misusing or misapplying these funds away from their intended purpose. It is contrary to the long-standing policy of tribal self-determination for federal bureaucrats within the BIA or FHWA to believe that tribes cannot be trusted to safeguard these funds or use them appropriately. Self-determination and self-governance tribes have been receiving lump sum advance payments for years to do everything from run hospitals to operate

housing programs, all without problems or controversy. There is nothing special or different about the IRR program which suggests tribes cannot be trusted to behave the same way when building or maintaining their tribal road system. The President, Assistant Secretary Gover and the members of Congress have all recognized that the federal policy of tribal self-determination and self-governance has been the most successful federal Indian policy in our Nation's history.

But despite Congress' plain words and the President's clear direction to promote tribal self-determination and sovereignty, on October 29, 1999, the Federal Lands Highway Division in FHWA sent a letter to Assistant Secretary Gover stating that FHWA would "continue to allow the use of advance payments in the IRR program" but only under strict FHWA-created guidelines and procedures. The FHWA has no choice but to "allow" advance funding, and it has no authority to impose its own internally-created limits on a tribe's right to receive advance funding. The legal analysis and conclusions expressed in this letter are flatly contrary to the statutes and regulations cited above, and the letter itself represents a major step backward for tribal contractors and compactors.

The timing of this letter is also truly remarkable. It was issued just a few days after the FWHA testified at the oversight hearing and generally received praise from this Committee for FHWA's faithful implementation of TEA-21. Unfortunately, the position expressed in the letter completely ignores TEA-21's mandate that IRR funds are fully subject to the mandates of the ISDEAA. The FWHA also testified before the Committee that the agency was committed to working in close collaboration and cooperation with Indian tribes and would soon be issuing a formal policy on the matter. Yet, the FWHA's advance funding letter was created in secrecy and with absolutely no tribal consultation. I enclose this letter with this testimony for the Committee's information.

Federal negotiators on the Rulemaking Committee should be striving to read TEA-21 in a manner that favors the position taken by tribal negotiators if at all possible. The BIA and FHWA's position concerning the availability of 6% funds and advance funding shows that just the opposite has occurred in these instances. We are hopeful that upon further reflection and additional legal analysis, the FHWA will shortly withdraw from the advance funding position stated in the October 29 letter. We will continue to look to this Committee to help tribal negotiators ensure that the BIA and FHWA negotiators live up to the letter and spirit of TEA-21 and the ISDEAA during the TEA-21 negotiated rulemaking process.

**Seneca Nation concerns with the BIA-Eastern Area Roads Division.** The Seneca Nation has had problems working with our BIA-Eastern Area Roads Division.

The Nation has now successfully performed several IRR construction projects under self-determination contracts with the BIA. Unfortunately, it often feels like we have been successful in spite of the BIA. Rather than receiving support, encouragement and competent technical advice and assistance in performing these self-determination contracts, the Nation's staff has often been told incorrect information or received advice that later proved to be false or contrary to the law. Further, BIA staff in the Eastern Area Roads Division have often behaved in an unprofessional manner in dealing with our staff, refusing to return telephone calls or behaving rudely or unresponsively during interactions on road projects -- in some instances even exhibiting a shocking lack of concern for the safety of our people.

For example, one Eastern Area Roads program engineer advised our Transportation Manager of the need to complete all the Nation's road condition ratings in just a few weeks. When our Transportation Manager expressed concern that the deadline would not give her sufficient time to do a safe and proper job, the engineer told her "to just do them from [her] desk" because "it really doesn't matter." We were shocked that a BIA engineer would be so casual about a matter as essential to public health and safety as the physical condition of our tribal road system. Of course, our Transportation Manager ignored this advice and did the job properly, but the incident has left us very concerned about what the Area Office does when they perform their own work on behalf of the Indian tribes in the Eastern Area.

Another example of a problem we have experienced with the Eastern Area arises from their implementation of the ISDEAA. The Eastern Area office developed a "standard" contract for roads, which is deficient in several significant ways. As mentioned above, the ISDEAA and the regulations require the BIA to create a "schedule of advance payments" for these contracts. However, the BIA-Eastern Area Roads Division offered us only a progress payment system in all our contracts. The ISDEAA also requires that tribes be allowed to keep "savings" on cost reimbursement construction contracts to "be used to provide additional services or benefits under the contract." 25 U.S.C. 450j-1(a)(4). However, the cost reimbursement construction contracts offered to the Seneca Nation all contained express provisions requiring us to pay these savings back to the BIA.

In fact, in one case, the BIA "accidentally" sent us an advance payment but then immediately demanded that we pay the money back. It later required us to pay back \$132,000 in savings as a condition of closing out the contract. These savings resulted from the Nation's efficient performance of the construction contract. By law, we should have been permitted to keep these savings to provide additional services under the contract. Now that we are aware of these legal requirements, we plan to ask the BIA to

return these funds to us. We also plan to amend our contracts so that they comply with the law in the future.

These are just a few examples out of many where the BIA-Eastern Area Roads Division has been negligent or has advanced its own interests at the expense of the Seneca Nation.

We urge this Committee and Congress to support the tribes efforts to make the BIA more responsive to tribal needs. We also believe that to improve the situation, tribes should be given greater flexibility in choosing who to negotiate with in concluding self-determination construction contracts. We are aware that some BIA Area Roads divisions have been quite helpful and supportive of tribes performing self-determination construction contracts. They have actually been a help not a hindrance to contracting tribes. If it is possible, tribes should be allowed the freedom to contract with these more helpful Roads divisions or with BIA Headquarters if they so choose. If choosing the option of working with BIA Headquarters, the tribe's "relative need" funding allocation could be retained by BIA Headquarters, at the direction of the tribe. By permitting these options for tribes, the BIA Roads department would become more efficient and more responsive to tribal interests.

**FHWA Reassumption of the IRR Program.** Several tribal witnesses testified that Indian tribes might be better served if the IRR program was directly managed by the FHWA. While I understand the frustration felt by these tribes in working with the BIA on IRR matters, I am concerned that this proposal might have unintended, negative consequences for tribes. As the "advance funding" letter indicates, the FHWA does not always take positions that are in the best interest of Indian tribes. The quality of support services and technical advice provided to tribes also depends greatly upon the training, competence and individual personalities of the federal employees involved. Although our experience working with the BIA-Eastern Area Roads Division has not been good, we are aware of many BIA employees who are truly supportive of tribal self-determination and have been a great asset to tribes over the years. The BIA has much more experience working with tribes and implementing the ISDEAA. BIA employees are most often tribal members themselves and are more understanding of our culture and traditions. It is not clear to me that the FHWA would be more responsive to tribes or more efficient in administering the IRR program. The initial costs of such a transfer could also be quite significant.

Similar to the proposal mentioned above, the Seneca Nation instead supports an amendment to the ISDEAA which would allow tribes to contract or compact for their share of the IRR program directly with the FHWA and the Secretary of Transportation.

The IRR funds associated with these FHWA-administered contracts or compacts would not be transferred to the BIA or used in calculating the BIA's 6% administrative funds. This change in the law would empower tribes, but it would not dictate any particular solution to them.

Tribes should be allowed the freedom to contract or compact with BIA-Area Road divisions, BIA Headquarter or the FHWA, as they so choose. By creating competition in this way and by having IRR funds flow to the most efficient agencies and offices, the BIA and FHWA would become more responsive to tribal interests and more accountable for their own actions. This proposal will foster tribal self-determination and, like all healthy competition, it will promote greater efficiency within both agencies.

On behalf of the Seneca Nation of Indians, I thank the Committee for this opportunity to provide the views of the Seneca Nation on these important transportation matters.



U.S. Department  
of Transportation  
Federal Highway  
Administration

400 Seventh St., S.W.  
Washington, D.C. 20590

OCT 29 1999

Refer to: HFPD-5

The Honorable Kevin Gover  
Assistant Secretary for Indian Affairs  
U.S. Department of the Interior  
Bureau of Indian Affairs  
1849 C Street, NW  
Washington, DC 20240

Dear Mr. Gover:

This letter is in response to Mr. LeRoy Gishi's (Chief, Division of Transportation, Bureau of Indian Affairs (BIA)) request that we reevaluate our position on advance payments for the Indian Reservation Roads (IRR) program that was defined in our July 1, 1996, letter in light of the Transportation Equity Act for the 21<sup>st</sup> Century changes to the IRR program and the regulations issued by you for Public Law 93-638. After review and consideration of health and safety, program oversight and delivery, we are pleased to advise you that we will continue to allow the use of advance payments in the IRR program based on Title 23, United States Code (23 U.S.C.) 121, 124 and 201; and Public Law 93-638 sections 105(h), 108(c) model agreement section 1(b)(6), and 403(g)(2) as outlined in this letter. Title 23, U.S.C. 201 subjects the IRR program to all provisions of 23 U.S.C. The 23 U.S.C. 121 provides for payment of construction work as provided for in the approved plans, specifications, and estimates (PS&E) and project agreement. Section 124 provides for advance payment of funds when certain conditions are met.

Under two previous negotiated rulemakings with Indian tribal governments, you issued payment section 900.132 for self-determinations contracts under Title 1 of Public Law 93-638 and proposed section 1000.356 (NPRM, February 12, 1998) for self-governance compacts under Title 4 of Public Law 93-638. We evaluated their adequacy for use in the IRR program. We also considered the two 25 Code of Federal Regulations (C.F.R.) section 900.125 and the proposed section 1000.223 that address construction requirements including health and safety to see if they are consistent with 23 U.S.C. 106 and 109 and their affects on making advance payments. The 23 U.S.C. 106 contains the requirement that PS&E are prepared for each construction project and that a project agreement is developed based upon the approved PS&E. The 23 U.S.C. 109 contains the requirement that the PS&E must meet design, safety, and construction standards. We did not see any major areas of disagreement among your regulation sections and our 23 U.S.C. sections.

Since there are different advance payment provisions for self-determination contracts, section 108 self-determination contracts or grants, and self-governance compacts, our advance payment position is different for each type of agreement. In addition, there are two IRR program requirements involving the approval of the IRR activity or projects that affect advance payments. These approval requirements are defined in 23 U.S.C. 106(a)(2) and 204(a)(3). (A copy of all referenced Title 23 sections is enclosed.)

You are authorized to make advance payments using IRR funds as follows:

#### Title I, Section 108, Self-determination Contract or Grant

After we have approved the IRR Transportation Improvement Program (TIP) and you have entered into a self-determination model 108 contract or grant with a tribal government or consortium for non-construction activities:

- a. You can make advance or lump sum payments for transportation planning as outlined in model agreement section 1(b)(6).
- b. You can make advance payments for the construction engineering for the IRR project(s) as outlined in model agreement section 1(b)(6), after the PS&E are approved in accordance with the appropriate IRR stewardship agreement.

#### Title I, Self-determination Construction Contracts

After we have approved the IRR TIP and you have entered into a self-determination construction contract with a tribal government or consortium:

- a. You can make advance payments for transportation planning as outlined in 25 C.F.R. 900.132. A lump sum advance payment can be made if all of the work is scheduled to be performed within 90 days or the amount is less than \$5,000.
- b. You can make advance payments for the design of the IRR project as outlined under 25 C.F.R. 900.132.
- c. You can make advance payments for the actual construction of the IRR project as outlined under 25 C.F.R. 900.132 after the PS&E have been approved. This means that the estimated construction amount is not to be included in the quarterly payments until the PS&E is approved in accordance with the appropriate IRR stewardship agreement. A lump sum advance payment can be made if all of the construction work is scheduled to be performed within 90 days.



- d. You can make advance payments for the construction engineering for the IRR project as outlined under 25 C.F.R. 900.132 after the PS&E are approved in accordance with the appropriate IRR stewardship agreement. This means that the estimated construction engineering amount is not to be included in the quarterly payments until the PS&E are approved in accordance with the appropriate IRR stewardship agreement. A lump sum advance payment can be made if all of the work is scheduled to be performed within 90 days.

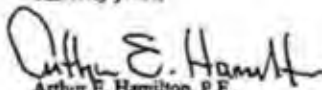
#### Title 4, Self-governance Compacts

After we have approved the IRR TIP and you have entered into an annual funding agreement with a tribal government or consortium:

- a. You can made advance payments for transportation planning as outlined in 25 C.F.R. 1000.356.
- b. You can make advance payments for the design of the IRR project as outlined the under 25 C.F.R. 1000.356.
- c. You can make advance payments for the actual construction of the IRR project as outlined under 25 C.F.R. 1000.356 after the PS&E are approved in accordance with the appropriate IRR stewardship agreement.
- d. You can make advance payments for the construction engineering for the IRR project as outlined in the proposed 25 C.F.R. 1000.356 after the PS&E are approved in accordance with the appropriate IRR stewardship agreement.

In summary, the two regulations (25 C.F.R. 900.132 and the proposed 1000.356) and the section 108 model agreement section 1(b)(6) can be used to make advance or lump sum payments as discussed above as long as the two Title 23 requirements [106(a)(2) and 204(a)(3)] are met. We hope this letter clarifies our position on advance and lump sum payments in the IRR program. If you have any questions, please contact Mr. Paul R. Los at (202) 366-9480.

Sincerely yours,



Arthur E. Hamilton, P.E.  
Program Manager, Federal Lands Highway

2 Enclosures

cc: Mr. LeRoy Gishi, Chief, Division of Transportation, BIA  
Mr. Pat Patterson, Office of the Solicitor, U.S. Department of the Interior

**SUMMIT LAKE PAIUTE TRIBE**  
**655 Anderson Street**  
**Winnemucca, NV 89445**

*Robert Sany, Tribal Chairman*  
*Rubyne Burdette, Vice-Chairperson*  
*Lorraine Watson, Secretary/Treasurer*

*Laurel Gilmann, Council Member*  
*Lucille Sany, Council Member*

**Written Testimony for the Senate Committee**  
**on Indian Reservation Roads and the**  
**Transportation Equity Act for the 21st Century**

The Summit Lake Paiute Tribe is located in a remote portion of Humboldt County in the upper northwest corner of Nevada. The reservation consists of 12,573 acres or 19.6 square miles. Although it fluctuates in size from year to year, the 600-acre lake for which the reservation is named is located roughly in the middle of the reservation.

The majority of land adjacent to the reservation is managed by the Bureau of Land Management (BLM). The Lahontan Cutthroat Trout State Natural Area, a 5,027-acre conservation easement that was transferred from Soldier Meadows Ranch to the BLM, is directly adjacent to the east boundary of the reservation. Another conservation area, the Sheldon National Wildlife Refuge, is located northwest of the reservation and covers approximately 1/2 million acres.

At this time, access to the reservation is severely limited due to constantly changing weather conditions and subsequent roadway deterioration. The resulting roadway system is unpredictable in nature and has historically hindered permanent occupancy, as well as the maintenance and operation of tribal facilities and fishery operations, at the Summit Lake Reservation. The Summit Lake Paiute Tribe is considered a small Tribe.

The reservation access during winter months and other times of the year becomes unstable. Tribal members desire, however, to access and reside on their reservation lands. The reservation roadway system must be improved before this goal can be accomplished.

In addition to these Tribal concerns, the reservation road system also provides a transportation link of regional significance. The primary route of travel from Gerlach area (through the Black Rock Desert) (southern access) to the Denio area (northern access) and the Sheldon National Wildlife Refuge (west/ north access) runs through the reservation. As a result, the reservation experiences hunting, tourist, and general traffic generation in addition to the Tribal traffic.

While Humboldt County is responsible for the condition of these roads and maintenance up to reservation boundaries, the County has no jurisdiction or obligation to conduct maintenance activities on the portions of road that travel through the reservation. Historically the BIA, and in recent years the Summit Lake Paiute Tribe under the Indian Self-Determination Act, has been responsible for this maintenance. Funding and priority concerns, however, have not allowed for the adequate maintenance of this road system. The Tribe receives only \$3,300.00 per year for roads maintenance.

Heavy snows and rainfall in 1998 & 1999 resulted in flooded reservation roads and closed the only access route for points south and north. Travelers attempting to circumnavigate this intersection either became stranded or begin to cut new roadways into the surrounding areas, many of which consist of wetland habitats. The situation results in extreme environmental degradation and safety hazards. Exacerbating this safety issue is that travelers are motivated to attempt passing through this flooded area, even when signed and closed to travel. By the time travelers reach this segment of road they have already traveled nearly seventy miles of gravel roads and getting past this intersection is the only way to continue on toward either Denio or Gerlach (Black Rock Desert)

The Tribe has recently applied for Emergency Relief for Federally Owned Roads, only after learning of this program through the brochures on TEA 21. When efforts were made to request the Bureau of Indian Affairs Roads personnel to assist in this matter, the Tribal Chairman and Vice Chairperson were met with disregard from the Area Roads Engineer because it was felt that the Tribe would not qualify for this type of funding. The Tribe did, however, pursue the issue

and is working with Federal Highway in getting information together to support our ERFO project. There has been little effort by the Bureau of Indian Affairs Phoenix Area office to initiate or assist in this process.

The BIA is the primary source of funding for re-ervation roadway maintenance and construction. Road construction funds are primarily provided to tribes through the project distribution process and the relative needs formula. Considering the factors in the relative need formula, the Summit Lake Paiute Tribe is currently at a great disadvantage for receiving funding because of poor qualifiers in the relative needs formula including a low population, low average daily traffic, and lack of transportation planning reports (identifying cost to improve estimates, updated road inventories and current vehicle miles traveled data). As a result, funding for the Tribe based on the current relative need formula has not proved adequate to date, especially for routine maintenance, and construction dollars. The Tribe has historically received little or no funding for road construction. **In the past twenty years**, the Tribe only received funds in 1998 for a 2 percent planning grant of approximately \$55,000.00 and was credited for Bureau of Indian Affairs oversight costs for archaeological work at approximately \$50,000.00, unbeknownst to the Tribe until recently.

As a result of the 2 percent planning grant, the provision of cost to improve estimates may improve but other factors, such as low population and VMT will continue to hurt the Tribe's chances for adequate funding under the current relative need formula.

The Summit Lake Paiute Tribe was fortunate in getting a representative on the Negotiated Rulemaking Committee, however, this process is hurt by the fact that there is not sufficient dollars in the Indian Reservation Roads program to fund the transportation need in the Nation. The Tribe's are pitted against each other in this process and it has become a difficult task to "cut an already too small pie". Change is difficult and for those tribes who are just getting their transportation needs barely met, to add more tribes under a new formula will only create hardship. A new formula is needed and more funding to support it. Thank you.



# **Intertribal Transportation Association**

**President • Everett Waller, Osage Nation**

**Vice President • Alfred Yazzie, Navajo Nation**

**Secretary/Treasurer • George Wallace, Comanche Nation**

**Executive Director • David McKinney, Muscogee Creek Nation**

## **Statement of Everett Waller, President Intertribal Transportation Association for the Senate Committee on Indian Affairs Oversight Hearing on Indian Reservation Roads and the Transportation Equity Act of the 21st Century October 20, 1999**

**Joe Salt  
Navajo Nation**

**Bruce Dandridge  
Osage Tribe**

**Edward Johnston, Jr.  
Ojibwa Indian Nation**

**Barley Buzzard  
Cheyenne Nation of  
Oklahoma**

**John Ruddy  
Fort Belknap  
Community**

**Judy Clark  
Seminole Nation of  
Oklahoma**

**Pete Red Yamahawk  
Standing Rock Sioux**

**Chuck Tinsley  
Kiowa Tribe of  
Oklahoma**

**Herbert Tate  
White Mtn.  
Apache Tribe**

**Alfred Kinner, Sr.  
Teton Chok  
Conference Inc.**

**Robert McKay  
Whelan/Pease**

On behalf of the Intertribal Transportation Association (ITA), I am pleased to submit the following statement on issues related to the implementation of the Indian Reservation Roads and the Transportation Equity Act of the 21st Century (TEA-21) programs. The ITA is a national non-profit organization representing Indian tribes on transportation issues at the national level. Based in Stillwater, Oklahoma, ITA has a membership of over 90 federally recognized tribes, representing various geographic regions and both small and large tribes. It has been estimated that tribal roads constitute 2.63 percent of all roads eligible for TEA-21 funding. Collectively our membership represents approximately 75 percent of the entire 51,000 miles in the BIA roads inventory annual Indian Reservation Roads funding.

The ITA organized and conducted a series of Town Hall meetings during which the BIA and the Federal Highway Administration (FHA) obtained information and recommendations from Indian tribes on reservation transportation policy and needs. Many ITA members are on the TEA-21 negotiated rulemaking Committee and have participated in the rulemaking sessions. During the course of our administration of the town hall meetings

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and involvement in the rulemaking sessions, the following issues have consistently been of greatest concern to tribes.

**Obligation Limitation.** As Assistant Secretary Gover's Report on Tribal Priority Allocations indicates, and as the tribes can readily attest, funding for Indian reservation roads is woefully inadequate. You will note that the Bureau estimates Indian reservation roads construction needs at \$8.6 billion. Yet, in spite of the efforts of some members of Congress, tribal funding under the Indian Reservation Roads (IRR) program has lost ground under TEA-21.

First and foremost, enactment of TEA-21 made applicable to Indian Reservation Roads funds, for the first time, the "obligation limitation," which will result in a certain amount of funds not being available to tribes but instead reallocated to the states. Although the obligation limitation requires the FHWA to withhold a certain percentage to be redistributed closer to the end of the fiscal year among recipients with projects ready for funding, TEA-21 does not include tribes among those eligible to receive such redistribution. This obligation limitation will cause tribes to lose \$18.3 million in FY 2000 appropriated funds.

Additionally, TEA-21 also eliminated the one percent set-aside for the Indian Bridges program and required that funding for the rehabilitation and replacement of bridges in Indian country come from within the IRR program. Therefore, in spite of the hard-won general increases, the net loss for FY 2000 due to the obligation limitation and loss of the one percent setaside is estimated at \$45 million.

We respectfully request that the Committee support and work toward ensuring that IRR funds are, once again, not subject to the obligation limitation so that tribes may receive 100 percent of the much needed funds provided under TEA-

21. ITA fully supports and endorses the intent of the proposed amendment to TEA-21 that the Red Lake Band of Chippewa Indians submitted to the Committee along with Chairman Whitefeather's testimony on October 20, 1999. We urge the Committee to make every effort to enact this or a similar amendment as soon as possible to stop the diversion of IRR funds away from the great needs in Indian Country.

**BIA Program Management Funds.** Tribes have become increasingly concerned about the Bureau's accountability for and the amount of IRR funds retained by the BIA for program management costs. As you know, the Bureau is authorized to utilize up to six percent of the FHA Indian roads construction funds for administration and management activities. The BIA has historically retained the full six percent for its use but has never reported on what these funds are used for. The BIA recently took a positive step toward accountability. Approximately one month ago the Assistant Secretary-Indian Affairs directed that an initial 50 percent of the Program Management and Oversight funds be distributed to each region and that additional funds will not be released until each region submits a budget justification approved by the Deputy Commissioner of Indian Affairs.

The steps are not sufficient, however. ITA, believes strongly that the Committee should request the General Accounting Office conduct a study or audit of how the BIA's Area Offices have expended the six percent management and administration funds that the Agency has withheld for the past several years. Such a study and/or audit should also seek to determine the method, if any, by which the BIA determines whether the total six percent should be withheld, and the manner in which such funds are expended. This information will help the Committee and ITA's members evaluate whether the BIA is withholding an appropriate amount of funds and whether they are being spent in the most effective manner possible. In addition, our members firmly believe that TEA-21 mandates the availability for contracting and compacting all

Highway Trust Funds transferred to the BIA, and any study should require that the BIA provide its rationale for withholding any amount of IRR funds from contracting or compacting.

**FHA Management of IRR Program.** Several tribal representatives who testified on October 20, 1999, expressed the view that the tribes would be better served if the IRR program was directly managed by the FHA. Some of the reasons for this recommendation are that, currently, the flow-through of FHA funds via the Bureau results in less IRR dollars to the tribes (due to the six percent off the top to the BIA for the aforementioned program management); direct management by the FHA would likely decrease the bureaucratic steps in the contracting process; and, the FHA is "expert" in transportation matters, whereas within the Bureau transportation is only one of many programs which the BIA oversees. ITA will consult with its member tribes regarding the transfer of the IRR program to FHA and intends to provide additional comment thereafter.

**Negotiated Rulemaking Process.** As other tribal witnesses testified on October 20, 1999, tribal representatives on the rulemaking committee have been greatly frustrated that it took eight months to get the TEA-21 negotiated rulemaking committee up and running. More importantly, organizational and logistical difficulties have contributed to the Rulemaking Committee not being further along in its efforts. We are hopeful that the decision to conduct all remaining negotiated rulemaking sessions in Albuquerque, New Mexico will aid in having all necessary materials and data readily available to facilitate the workgroups' efforts, and that adequate support staff will be available to facilitate the Committee's work.

On behalf of the Intertribal Transportation Association, thank you for the opportunity to provide our views on the implementation of Indian Reservation Roads and TEA-21. We look forward to working with you to identify and address the transportation needs of Indian tribes.





## SQUAXIN ISLAND TRIBE

WRITTEN TESTIMONY OF  
ROBERT WHITENER, JR., EXECUTIVE DIRECTOR  
FOR THE SQUAXIN ISLAND TRIBE  
SUBMITTED TO THE  
SENATE COMMITTEE ON INDIAN AFFAIRS

ON THE  
OVERSIGHT HEARING ON INDIAN RESERVATION ROADS AND THE  
TRANSPORTATION EQUITY ACT FOR THE 21<sup>ST</sup> CENTURY (TEA-21)

OCTOBER 20, 1999

The Squaxin Island Tribe of Washington State thanks the Senate Committee on Indian Affairs for the opportunity to submit written testimony regarding the Indian Reservation Roads Program.

### Summary of Testimony:

Under TEA-21, Congress required the Secretary of Interior to apply negotiated rulemaking to establish a formula to allocate funding among Indian tribes in fiscal year 2000 and beyond and to issue regulations governing the Indian Reservation Roads Program. In the 16 months following promulgation of TEA-21, the Secretary has failed to establish a process which will lead to meaningful negotiation, or which will ever deliver a funding formula and regulations for Indian reservation roads. Further, it appears that this will not occur unless the Secretary is compelled to abide by the intent of Congress under TEA-21.

### Statement of Concerns and Recommendations:

#### **I. Failure to establish a funding formula and to issue regulations for fiscal year 2000.**

The Secretary failed to establish a formula for fiscal year 2000 and issue final regulations by April 1, 1999 as required by TEA-21. The Secretary now proposes to allocate funds among Indian tribes for fiscal year 2000 in the same manner as in fiscal year 1999. Such a funding distribution is unacceptable to the majority of Indian tribes because it is neither the product of government-to-government negotiations with tribes nor is it based on the relative transportation needs or the relative administrative capacities of and challenges faced by various Indian tribes.

**Recommendation:** Until such time that the required formula and regulations are issued, require the Secretary to set aside 25% of all funds appropriated for Indian reservation roads in fiscal year 2000. Distribute these funds as a minimum apportionment to all Indian tribes who had no allocation or received no project obligation, excepting 2% planning, between 1992 and 1999. Conceptually, this is similar to the allocation formulas used in nearly all Highway Trust Fund distributions to state transportation programs that guarantee a minimum base level of funding. The following proposals which were tabled by the Rulemaking Committee embody this minimum apportionment concept (Attached):

- Resolution No. 99-86 of the Squaxin Island Tribal Council dated September 23, 1999;
- Proposal for Interim Funding Formula Distribution developed and signed by a group of Concerned Tribal Representatives to the TEA-21 Negotiated Rulemaking Committee on Sept. 16, 1999;
- Resolution #99-67 of the Affiliated Tribes of Northwest Indians dated September 30, 1999.

The use of the TEA-21 allocation methodology is also supported by Senator Patty Murray, in her letter to this Committee. (Attached)

**2. Federal officials seem to presume they can continue to use the fiscal year 1999 formula to allocate funds among Indian tribes until the Secretary establishes a new formula.**

There seems to be advocacy by some federal participants to the Rulemaking process to allocate funds in fiscal year 2000 in exactly the same manner as in fiscal year 1999. There also seems to be the presumption that the 1999 formula can be used indefinitely absent a consensus recommendation from the Rulemaking Committee on a new funding formula. Senior federal officials have stated that the Assistant Secretary of the Interior may consider consensus recommendations from the Rulemaking Committee for an interim formula for fiscal year 2000. As long as federal officials and those Tribal representatives who benefit from using the 1999 formula consistently block attempts to negotiate a new formula, the negotiations will likely remain stalled indefinitely.

**Recommendation:** Clarify the intent of Congress to federal officials and tribal representatives regarding whether all tribes or only historic recipients are the intended beneficiaries of IRR funds and whether continued use of the 1999 formula is acceptable. We do not believe that Congress required these negotiations to perpetuate the paternalistic system developed by the BIA that benefits relatively few tribes and leaves as many as 350 tribes without any funds to accomplish needed transportation activities. Take to heart the statement of the Affiliated Tribes of Northwest Indians that "the present system is not working for the majority of Indian tribes."

**3. Makeup of the Rulemaking Committee is inconsistent with the requirements of TEA-21.**

In establishing a Rulemaking Committee, TEA-21 required the Secretary to "ensure that the membership of the committee includes only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes." The Rulemaking Committee is composed of 29 tribal representatives, 24 alternates, and federal representatives. The Secretary selected 24 primary tribal representatives and alternates from the 43 Indian tribes whose 1999 annual IRR allocations exceeded \$1,000,000 each. These 43 tribes receive nearly 75% of all IRR construction funding under the current system. Two-thirds of the committee representation was selected from among the 94 largest tribes in the nation. Just nine representatives come from 217 Indian tribes whose allocation is under \$100,000 per year. Another 183 Indian tribes receive no allocation at all, yet they have only two representatives appointed to the Rulemaking Committee. By loading the Rulemaking Committee with the historic recipients of IRR funding, the Secretary has established a committee whose members for the most part have a vested interest in keeping things as they are. Unless external pressure is focused on this process, substantive progress on a funding allocation formula and regulations is unlikely.

**Recommendation:** There are approximately 400 tribes receiving an annual allocation of less than \$100,000 or no allocation at all; these are the under-represented tribes on the Rulemaking Committee. Although funds are allocated to some of these tribes, funds are seldom obligated for projects on their reservations. One remedy may be to add representation from these tribes to the Rulemaking Committee. More effective though, may be exerting external pressure on the parties to negotiate. One way to exert pressure may be to "freeze" all or a portion of the Indian reservation roads construction funding for fiscal year 2000 until establishment of a funding formula and issuance of regulations in final form occurs.

**4. The funding formula used in 1999 was implemented under ISTEA without adequate consultation with Indian Tribes, and its continued use is unacceptable to most tribes.**

Between 1993 and 1996 the BIA changed the funding formula from one based on population, road miles, and land area to one based on cost to improve existing roads, existing road use, and to a lesser extent on population. In 1988 the BIA hired A/E Group, Inc. to lead five private firms that had previously prepared reservation transportation plans to consult with BIA Area Road Engineers to develop a new relative need formula. Many of the plans and associated inventories completed by these contractors for the BIA would ultimately fall into disrepute among much of Indian Country. Although the impacts on tribal transportation programs resulting from the formula changes were profound, Tribal involvement in the process was minimal. The impact for FY 1999 alone was a shift of some \$28 million with 125 Albuquerque, Portland, and Phoenix Area tribes losing 20, 30, and 40 percent respectively of their former IRR allocations.

**1999 Impact of 1993-1996  
Changes to Relative Need Formula**

BIA Area	Current FY99 RNF	Old FY99 RNF	Change	% Change
Aberdeen	\$ 18,496,126	\$ 20,366,918	(\$1,870,792)	-9.19%
Anadarko	\$ 8,211,949	\$ 3,590,101	\$4,621,848	128.74%
Billings	\$ 16,973,988	\$ 19,059,212	(\$2,085,224)	-10.94%
Juneau	\$ 16,629,802	\$ 5,825,791	\$10,804,011	185.45%
Minneapolis	\$ 9,800,082	\$ 9,093,027	\$707,055	7.78%
Muskogee	\$ 18,609,231	\$ 16,429,585	\$2,179,646	13.27%
Phoenix	\$ 20,983,611	\$ 34,950,687	(\$13,967,076)	-39.96%
Sacramento	\$ 4,607,228	\$ 4,743,482	(\$136,254)	-2.87%
Albuquerque	\$ 12,985,687	\$ 16,293,534	(\$3,307,847)	-20.30%
Navajo	\$ 59,085,790	\$ 49,568,976	\$9,516,814	19.20%
Portland	\$ 12,545,047	\$ 18,090,615	(\$5,545,568)	-30.65%
Eastern	\$ 4,131,459	\$ 5,048,072	(\$916,613)	-18.16%
	\$ 203,060,000	\$ 203,060,000	\$0	

For the Squaxin Island Tribe, the impacts were even more extreme. Although the formula allocation for the Squaxin Island Tribe totaled \$360,000 under ISTEA between 1992 and 1997, the Tribe receive only one small chip sealing project for \$12,400. The formula change combined with incorrect inventory information reduced the Tribe's annual allocation from \$80,000 in 1993 to \$12,420 in 1999. Had the BIA not changed the formula and used correct inventory data, the Tribe's 1999 allocation would have exceeded \$125,000.

**Recommendation:** Compel the BIA to engage in good-faith negotiations in the present rulemaking process to develop a new formula rather than perpetuating of the existing failed system. Provide supplemental funding to correct inaccurate inventories for those tribes that have not had the opportunity to participate in the IRR Program because they lacked the resources to undertake transportation planning and generate accurate inventory information. Recognize that the Bureau of Indian Affairs failed in its responsibility to assure accurate data for all tribes in the nation.

#### 5. Inadequate IRR Construction Funding

Indian reservation roads make up 2.63% of this nation's public highway system; yet, less than one percent of the annual allocations for the highway program is directed at providing transportation assistance for Indian reservation roads. Although annual authorizations increased under TEA-21 to \$275 million from ISTEA's \$191million; there was only a slight increase in funding for tribal roads projects. When the impacts of reductions for FHWA and BIA administration, the bridge program, obligation limitation, and other takedowns are deducted, about \$203 million remains for IRR transportation assistance to tribes. Under TEA-21, IRR became an allocated program with an obligation limitation takedown of \$32 million in 1999.

**Recommendation:** Increase the IRR program authorization to levels comparable with the states and repeal the provision of TEA-21 that applied obligation limitation to the IRR program for the first time. Unlike state programs, the IRR program does not recover obligation limitation takedowns when those funds are redistributed. A technical amendment to TEA-21 restoring the IRR Program from the allocated programs to the 100%-funded programs would provide additional funding to address the deplorable condition of Indian reservation roads without increasing appropriations.

#### 6. Inadequate Maintenance Funding

Maintenance funding for the IRR system averages less than \$500 per mile while states are allocated \$4,000 to \$5,000 per mile for road maintenance. The BIA estimates an annual need for road maintenance at \$100 million annually, but only about one quarter of that amount is appropriated through the Department of Interior appropriations for road maintenance. Because Indian reservation roads are not adequately maintained, road life is reduced and reconstruction of existing roads consumes IRR construction funding at an unacceptable rate. Although the design life for BIA roads is 10 to 15 years, reconstruction and resurfacing frequently occurs within seven or eight years. On the Squaxin Island Reservation, many roads are approaching 25 years of age having never received maintenance, reconstruction, or resurfacing by the BIA.

**Recommendation:** Consolidate the BIA maintenance program with the IRR construction program, but retain separate authorization for maintenance funding similar to the IRR Bridge Program. Increase the authorization for Indian reservation roads maintenance to \$100 million.

**7. The BIA manages the most complicated allocation system of all transportation programs distributing Highway Trust Fund monies, and it resists all change or improvement.**

Highway Trust Fund monies are allocated to states under a number of formulas employing various combinations of population, gas tax collections, road or lane miles, and minimum apportionment. The BIA administers a complex inventory-driven system using various arcane data sets and indexing schemes, the impacts of which the administrators do not fully understand.

**Recommendation:** Consider transferring the entire IRR program to the Federal Highway Administration. Highways and roads are FHWA's area of expertise as they have demonstrated repeatedly in their status as lead agency for the Metlakatla project, administering the Tribal Technical Assistance Program, and developing the Tribal Transportation Planning and Policy Guidelines. Increasingly, FHWA's multi-modal expertise is needed to coordinate federal, tribal, state, and local agencies in cooperative transportation projects. Under such a proposal it is imperative that tribal compacting and contracting authority is preserved and enhanced.



## SQUAXIN ISLAND TRIBE

### RESOLUTION NO. 99-86 of the SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and,

**WHEREAS**, under the Constitution, Bylaws, and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and with protecting and managing the lands and treaty resources and rights of the Tribe; and,

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and,

**WHEREAS**, the Squaxin Island Tribal Council is an eligible recipient of funds from the Federal Highway Trust Fund under the BIA-administered Indian Reservation Roads Program (IRR); and,

**WHEREAS**, the Squaxin Island Tribal Council did nominate a delegate, with concurrence of the 43 federally-recognized tribes from the BIA Portland Area, who was subsequently appointed by the Secretary of the Interior to the TEA-21 Negotiated Rulemaking Committee; and,

**WHEREAS**, the Squaxin Island Tribal Council did assign staff to assist the appointed delegate, Mr. David Whitener, Sr., and to assist in the rulemaking process; and,

**WHEREAS**, the United States Congress, through TEA-21 (the Transportation Equity Act for the 21<sup>st</sup> Century), mandated that the Secretary of the Interior, through a negotiated rulemaking procedure reflecting "the unique government-to-government relationship between Indian tribes and the United States" and including "only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes," to "issue regulations governing the Indian reservation roads program, and establishing the funding formula for fiscal year 2000 and each subsequent fiscal year ..." and,

**WHEREAS**, the US Congress, through TEA-21, required that "the regulations shall be issued in final form not later than April 1, 1999, and shall take effect not later than October 1, 1999; and,

**Proposal for Interim Funding Formula Distribution  
TEA-21 Negotiated Rulemaking Committee**

***Problem Statement***

Fiscal Year 2000 begins October 1, 1999, and it is apparent that the TEA-21 Negotiated Rule Making Committee will not reach agreement on a final IRR funding formula as required by the Transportation Equity Act for the 21<sup>st</sup> Century by that date. Many road construction projects are ongoing from prior fiscal years, and these projects require obligating IRR funds at the beginning of the fiscal year. The transportation systems serving Indian people today are the most seriously deficient components of all federal highways programs. This deficiency must be addressed without disrupting IRR funding delivery. For the benefit of all Indian people, some mechanism must be developed to allow the BIA to distribute IRR funding on an interim basis for Fiscal Year 2000 prior to adopting a Final Rule for the Indian Reservation Roads Program.

Currently, other than 2% planning funds, there is no minimum funding allocation for tribes under the IRR construction program. There is no additional set-aside funding to build tribal administrative capacity or sustain tribal programs to implement required transportation activities. The relative need formula used by the BIA between 1993 and 1999 does not enable those tribes lacking IRR program funding to identify and implement their relative transportation needs. Because IRR funding is currently obligated on a project basis, the majority of tribes are precluded from undertaking needed transportation activities.

***Solution Statement***

A possible solution to address our present situation is to develop an interim funding formula for FY 2000 acceptable to and fair for all Indian Tribal Governments. We propose allocating IRR funding into two components for FY 2000: 75% distributed to BIA Area Offices based on the BIA 1999 relative need formula and the remaining 25% distributed to all Tribes as a minimum apportionment. The minimum apportionment could be as equal amounts distributed to all Indian Tribal Governments.

By utilizing an interim formula early in the new fiscal year, we will be able to address other crucial tribal transportation issues with a powerful united voice. One such issue is revocation of the obligation limitation impacts to the Indian Reservation Roads Program. Recapture of these monies would make approximately \$45 million in additional funding available to support our transportation needs. We propose that these additional monies be distributed to BIA Area Offices based on the 1999 BIA relative need formula.

Finally, we propose that we try to achieve no net loss in total funding for any tribe in FY 2000 and FY 2001 by adjusting the final formula applicable for FY 2001 retroactively to FY 2000.



## Affiliated Tribes of Northwest Indians

### 1999 Annual Conference Pocatello, Idaho

#### RESOLUTION #99-67

#### "STATEMENT OF RECOMMENDATIONS REGARDING THE TEA-21 NEGOTIATED RULEMAKING"

### PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

**WHEREAS**, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific Tribal concerns, and

**WHEREAS**, the Affiliated Tribes of Northwest Indians is a regional organization comprised of American Indians in the states of Washington, Idaho, Oregon, Montana, Northern California, and Alaska; and

**WHEREAS**, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of Affiliated Tribes of Northwest Indians; and

**WHEREAS**, in January 1999, the Affiliated Tribes of Northwest Indians nominated delegates to the TEA-21 Negotiated Rulemaking Committee who were subsequently appointed by the Secretary of Interior as Members and Alternates to the Committee, and

**WHEREAS**, the Affiliated Tribes of Northwest Indians has established a Transportation Committee to address the transportation challenges faced by Northwest Indian Tribes, and

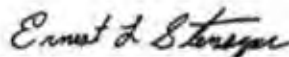


WHEREAS, the Transportation Committee of the Affiliated Tribes of Northwest Indians has prepared the attached "Statement of Recommendations Regarding the TEA-21 Negotiated Rulemaking," now

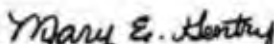
THEREFORE BE IT RESOLVED, be the Affiliated Tribes of Northwest Indians that the attached "Statement of Recommendations Regarding the TEA-21 Negotiated Rulemaking" represents concerns of all Northwest Tribes.

CERTIFICATION

The foregoing resolution was adopted at the 1999 Annual Conference of the Affiliated Tribes of Northwest Indians, held at Cavanaugh's in Pocatello, Idaho on September 30, 1999 with a quorum present.



Ernest L. Stensgar, President



Mary E. Gentry, Secretary

**Affiliated Tribes of Northwest Indians  
Transportation Committee  
Statement of Recommendations  
Regarding the TEA-21 Negotiated Rulemaking**

*Statutory Background:*

The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) mandated that the Secretary of the Interior, through a negotiated rulemaking procedure reflecting "the unique government-to-government relationship between Indian tribes and the United States" and including "only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes," to "issue regulations governing the Indian reservation roads program, and establishing the funding formula for fiscal year 2000 and each subsequent fiscal year."

*ATNI Transportation Committee Statement:*

The Affiliated Tribes of Northwest Indians nominated delegates to the TEA-21 Negotiated Rulemaking Committee who were subsequently appointed by the Secretary of Interior as Members and Alternates to the Committee. These delegates to the Committee are participating based on the belief that the rulemaking process mandated by Congress is intended to benefit all of the Indian Nations in the United States that want to undertake transportation activities through the Indian reservation roads program. Under ISTEA, the 1991 transportation authorization for fiscal years 1992 - 1997, approximately 350 tribes received no transportation construction funding. In the BIA Portland Area, 17 of 43 tribes received no transportation construction funding. The present system is not working for the majority of Indian tribes.

The Northwest delegates came to the rulemaking with the understanding that a new formula based on the relative needs and administrative capacities of these tribes would be developed. We were encouraged to "think out of the box" and develop creative new solutions to the universal transportation challenges confronting all Indian tribes. We are concerned regarding ongoing discussion advocating the use of the existing funding formula and process to extend perhaps through fiscal year 2003.

*ATNI Transportation Committee Recommendations:*

In consideration of the concerns of the Northwest tribes, the ATNI Transportation Committee

requests that the Rulemaking Committee seriously consider the following recommendations:

Demonstrate traditional respect for Tribal leaders who attend Negotiated Rulemaking Committee meetings and support their full participation in work group deliberations.

Develop a consensus recommendation for an interim formula for Fiscal Year 2000 that is simple, easy to administer, and allows for significant participation in Fiscal Year 2000 by every tribe that desires to do so.

In developing an interim formula, set aside Fiscal Year 2000 IRR construction funds for those projects that are ongoing and received IRR construction funds in Fiscal Year 1999, and set aside a base level of funding that will allow all tribes desiring to do so to participate in the IRR program.

In the interim formula, establish minimum requirements and eligible activities for the base level of funding distributed to all tribes.

In developing the formula to be included in the final regulation, give due consideration to other formula alternatives including block grants, minimum apportionment, service area-base funding, non-project based funding, or other innovative models that can only be found outside the box.

*Certification:*

The Transportation Committee Co-Chairs certify that the foregoing statement and recommendations represent the full consensus of the ATNI Transportation Committee representing 50 Northwest Tribes from the states of Alaska, California, Idaho, Montana, Oregon, and Washington.

\_\_\_\_\_  
Transportation Committee Co-Chair

Dated: 9/30/99

  
\_\_\_\_\_  
Transportation Committee Co-Chair

Dated: 9/30/99



Oneidas bring several hundred bags of corn to Washington's standing army at Valley Forge, after the colonists had consistently refused to aid them.

## Oneida Tribe of Indians of Wisconsin BUSINESS COMMITTEE



P.O. Box 365 • Oneida, WI 54155  
Telephone: 920-869-4364 • Fax: 920-869-4040



UJOWA DEMASIM YATEHE  
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

November 17, 1999

Honorable Ben Nighthorse Campbell  
Senate Committee on Indian Affairs  
SH-838 Hart Senate Office Building  
Washington, D.C. 20510-6450

Dear Chairman Campbell:

I would like to thank the Senate Committee on Indian Affairs for this opportunity to submit comments on the Indian Reservation Roads and the Transportation Equity Act of the 21st Century.

The Oneida Tribe of Indians of Wisconsin has been very fortunate in recent years due to our efforts in economic development and gaming. We have made great strides in government to government relations with the State of Wisconsin and municipalities surrounding our reservation.

The population, land base, and inventoried miles of the Tribal Nations in Wisconsin limit the opportunities of the Oneida Tribe of Indians of Wisconsin and other Wisconsin Tribes to participate in Federal transportation projects. The Indian Nations of Wisconsin must work together to realize the maximum benefit of Federal transportation programs.

In April of 1999, the Oneida Tribe of Indians of Wisconsin hosted a Town Hall Meeting. There was a large turnout of representatives from Indian Nations who came together for a common goal. The group sought to inform the Federal Government of the great need for money to improve existing Tribal transportation programs and to develop new programs. From this meeting, it was clear that not all Indian Nations in Wisconsin are treated equally by Federal Programs. The smaller Indian Nations are literally denied opportunities to improve existing roads or build new roads, because of the demands of larger Indian Nations throughout the United States.

I hope that careful consideration will be given to the following recommendations:

### RECOMMENDATIONS:

#### FUNDING FORMULA:

After deducting eleven percent (11%) for the obligation of limitations and the thirteen million dollars (\$13,000,000) set aside for the Reservation Bridge Program, there is considerably less money to distribute

to Indian Nations. This causes more competition between the Indian Nations, and inevitably, the smaller Indian Nations lose.

Funding for transportation is distributed through a formula developed by the Bureau of Indian Affairs ("Relative Need Formula") based on the cost to improve, the vehicle miles traveled, and the population of the affected Indian Nation. Under current conditions the Relative Need Formula benefits Indian Nations with large land bases, large populations, and large inventories of roads. Smaller Indian Nations are given low priorities, because under the Relative Need Formula, they cannot compete with the larger Indian Nations. Some smaller Indian Nations cannot even afford to compile the necessary data to apply for the Indian Reservation Roads Funding. They have no staff capable of compiling the transportation specific statistics.

I ask that the following be considered:

1. More emphasis must be placed on the transportation needs of Indian Nations rather than statistical data.
2. The population of a specific project target area should be considered rather than the population of the entire Indian Nation affected.
3. Consideration should be given to specific projects that will improve the quality of life or the economic development of the community, rather than on statistical data that may not provide equitable distribution of funds.
4. Transit program funding should be separated from Indian Reservation Roads Funding. Indian Nations should be able to apply directly to the Federal Transit Authority for funding instead of having to apply through a state.

#### SIX PERCENT (6%):

The intent of the six percent (6%) is understood, but because the need for money in Indian Country from the TEA-21 funding pool for the next four years, I recommend that this amount be eliminated. All of the money must be distributed to the Indian Nations.

#### OBLIGATION OF LIMITATIONS:

The obligation of limitations should be eliminated. An obligation of one hundred percent (100%), as in prior legislation, should be made to the Indian Reservation Roads Funding Program. This money should be set aside for the use of smaller Indian Nations for transportation planning, including the hiring of transportation planning consultants.

Thank you again for allowing me the opportunity to submit these comments.

Sincerely,



Gerald L. Danforth, Chairman  
Oneida Tribe of Indians of Wisconsin



## MANDAN, HIDATSA, & ARIKARA NATION

*Three Affiliated Tribes • Fort Berthold Indian Reservation  
HC3 Box 2 • New Town, North Dakota 58763-0402*

TRIBAL BUSINESS COUNCIL  
701-627-4761  
FAX 701-627-5865

January 14, 2000

Honorable Ben Nighthorse Campbell  
Chairman, Senate Committee on Indian Affairs

RE: Oversight Hearing on the Transportation Equity Act for the 21<sup>st</sup> Century

Dear Senator Campbell:

The Three Affiliated Tribes thank you for this opportunity to submit comments on the report emanating from the Senate Indian Affairs Committee's Oversight Hearing on the Indian Reservation Roads (IRR) program and the Transportation Equity Act of the 21<sup>st</sup> Century (TEA 21).

We have reviewed the oversight hearing report and agree that the BIA administration of the IRR program is not in full compliance with the mandates of Congress, as prescribed in TEA 21.

Although TEA 21 clearly provides that administrative services for the IRR program at the reservation level are contractible [see 23 USC Sec. 302(d)(3)(A)], the BIA Regional Office is reluctant to contract for this service. This handicaps our efforts to build our capacity for governance in accordance with the Indian Self-Determination Act, as recognized by Congress through TEA 21.

The administration of our IRR program is very complex because it includes our cultural, political, social and economic systems that influence the land ownership and use patterns and our intergovernmental relationships with six counties (to-wit: Mountrail, McLean, Mercer, McKenzie, Ward, and Dunn), the State of North Dakota, and the Corps of Engineers. Significant sovereignty, jurisdictional, budgetary and administrative consequences flow from the resolution of issues that arise on our Reservation on a daily basis. The administrative support provided to our Tribal decision-makers by engineers with the BIA Regional Office, who visit our Reservation two or three times a year, is woefully inadequate. Our Tribal decision-makers are in need of administrative support for the IRR program provided here at the local level by an administrator who supports our best interests in the program.

5 PM TAT LEGAL DEPT. NEWTOWN

FAX NO. 17016273626

P. 3

We have also recently been advised that our IRR funding for FY 2000 has been reduced by 45%. The BIA has advised us that this major reduction is caused by the road construction cost index for the State of North Dakota, as published by the FHWA, based on the "cost to improve" our IRR road system. The cost to improve is a factor in the relative need formula used by the BIA to allocate funding to the reservations. We seriously question the statistics used by the BIA for this formula and for other purposes. The North Dakota State Highway Department and the local FHWA office are not aware of any major reduction in road construction costs.

We fully support your efforts to improve the delivery system for the IRR program and will be glad to provide more detailed information specific to the Fort Berthold Reservation, if deemed beneficial. We would also support the formation of a tribal task force to study and recommend a delivery system that will be more responsive to the directives of Congress and the desires of the various tribes throughout Indian Country, including the Three Affiliated Tribes.

  
Sincerely,Tex G. Hall  
Chairman

Tribal Business Council

## **Proposal for Interim Funding Formula Distribution TEA-21 Negotiated Rulemaking Committee**

### ***Problem Statement***

Fiscal Year 2000 begins October 1, 1999, and it is apparent that the TEA-21 Negotiated Rule Making Committee will not reach agreement on a final IRR funding formula as required by the Transportation Equity Act for the 21<sup>st</sup> Century by that date. Many road construction projects are ongoing from prior fiscal years, and these projects require obligating IRR funds at the beginning of the fiscal year. The transportation systems serving Indian people today are the most seriously deficient components of all federal highways programs. This deficiency must be addressed without disrupting IRR funding delivery. For the benefit of all Indian people, some mechanism must be developed to allow the BIA to distribute IRR funding on an interim basis for Fiscal Year 2000 prior to adopting a Final Rule for the Indian Reservation Roads Program.

Currently, other than 2% planning funds, there is no minimum funding allocation for tribes under the IRR construction program. There is no additional set-aside funding to build tribal administrative capacity or sustain tribal programs to implement required transportation activities. The relative need formula used by the BIA between 1993 and 1999 does not enable those tribes lacking IRR program funding to identify and implement their relative transportation needs. Because IRR funding is currently obligated on a project basis, the majority of tribes are precluded from undertaking needed transportation activities.

### ***Solution Statement***

A possible solution to address our present situation is to develop an interim funding formula for FY 2000 acceptable to and fair for all Indian Tribal Governments. We propose allocating IRR funding into two components for FY 2000: 75% distributed to BIA Area Offices based on the BIA 1999 relative need formula and the remaining 25% distributed to all Tribes as a minimum apportionment. The minimum apportionment could be as equal amounts distributed to all Indian Tribal Governments.

By utilizing an interim formula early in the new fiscal year, we will be able to address other crucial tribal transportation issues with a powerful united voice. One such issue is revocation of the obligation limitation impacts to the Indian Reservation Roads Program. Recapture of these monies would make approximately \$45 million in additional funding available to support our transportation needs. We propose that these additional monies be distributed to BIA Area Offices based on the 1999 BIA relative need formula.

Finally, we propose that we try to achieve no net loss in total funding for any tribe in FY 2000 and FY 2001 by adjusting the final formula applicable for FY 2001 retroactively to FY 2000.

Concerned Tribal Representatives  
To TEA-21 Negotiated Rulemaking

September 16, 1999



**Proposal for Interim Funding Formula Distribution  
TEA-21 Negotiated Rulemaking Committee**

The following Tribal Representatives support adoption of the foregoing proposal for an interim funding formula distribution.

<u>Rolande Brachette</u>	_____
<u>Al Ketzley Sr</u>	_____
<u>DeWalt Cree</u>	_____
<u>_____</u>	_____
<u>_____</u>	_____
<u>Raymond L. Nielsen</u>	_____
<u>_____</u>	_____
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## Fort Belknap Indian Community



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Fort Belknap Agency  
Harlem, Montana 59526  
Pvt. (406) 353-2205  
FAX: Council - (406) 353-4541  
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Fort Belknap Indian Community  
(Tribal Office)  
Fort Belknap Indian Community  
Offices to administer the affairs of the community and  
to implement the laws and the laws of the  
State of the Fort Belknap Indian Reservation

November 2, 1999

Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, D.C. 20510-6450

Honorable Chairman:

Honorable Chairman Campbell and respected members of the Senate Committee on Indian Affairs. My name is Joseph McConnell, I am the President of the Fort Belknap Indian Community Council which is the governing body for the Gros Ventre and Assiniboine Nation on the Fort Belknap Indian Reservation in Montana. I thank you for this opportunity to submit our written testimony regarding TEA-21 and the Indian Reservation Roads (IRR) Program.

Our reservation is located in north central Montana and encompasses 652,593 acres. In addition, there are 28,731 acres of Tribal lands outside the reservation's boundaries obtained through the land acquisition program. The reservation is rectangular in shape with an average width of 28 miles. The average length north to south is 40 miles. The northern boundary is the Milk River; the southern boundary includes a large portion of the Little Rocky Mountains. The east and west boundaries are marked by survey lines. The Fort Belknap Reservation is the fourth largest of the seven reservations in Montana and is included in portions of Blaine and Phillips counties. Our on reservation population is approximately 4000 and we have a enrolled membership of 5256 people.

The Assiniboine were part of the Yantoni Sioux. The Gros Ventres are of Algonquian origin and are closely related to the Arapaho. The Assiniboine originally resided in the woodland area near northern Minnesota. The Gros Ventre resided near the Saskatchewan River area of the province of Alberta, Canada. In search of hunting areas, competition from other stronger Tribes, and the development of new trade routes, the Tribes migrated toward Montana in the 1700's - 1800's.

The Fort Belknap Indian Reservation was created by an Act of Congress on May 1, 1888 (Stat., L., XXV, 113). The site for the Fort Belknap Agency as the government headquarters was informally established in 1889. The Fort Belknap Agency is located four miles southeast of Harlem, Montana. Fort Belknap was named after William W. Belknap, Secretary of War under President Grant.

Fort Belknap Indian Community

Committee on Indian Affairs  
TEA-21 Oversight Hearing Written Testimony

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The male Indian voters accepted the Indian Reorganization Act (IRA) on October 27, 1934. This allowed Tribal members of Fort Belknap to establish a constitution and corporate charter. The constitution was adopted on October 19, 1935 and a corporate charter on August 25, 1937 in accordance with Section 16, of the IRA.

Under the Constitution and By-Laws of the Fort Belknap Indian Community, the Community Council is charged with the duty of protecting the health, security and general welfare of the Fort Belknap Indian Community. We are committed to providing a better place to live for the members of both tribes. We plan to accomplish this by developing more tribally-owned economic enterprises, creating opportunities for tribal entrepreneurs, providing better law enforcement and judicial systems, developing new programs which address social concerns, and preserving our tribal land base.

I would like to briefly address Transportation Planning, Road Maintenance, TEA-21, the Indian Reservation Roads (IRR) Program, Obligation Limitation, and the IRR Bridge Program.

Transportation planning is the procedure for determining, as accurately as possible, future transportation needs and the most practical ways to satisfy them. Transportation system planning is one of the most complex endeavors in which any community can become involved. The planning effort involved in preparing a transportation plan for an "Indian Reservation Roads" (IRR) system is unique because it includes roads under the jurisdiction of several different governmental agencies, not just the Bureau of Indian Affairs (BIA). This road network consists of all public roads that are located within, or provide access to an Indian reservation or trust lands. Also it is necessary to understand the political, cultural, and historical environment.

The Transportation Planning Process involves an in-depth and comprehensive evaluation of all factors influencing the performance and orderly growth of transportation systems. The primary objectives of transportation planning are to determine the needs for both new and existing transportation facilities and to lay the groundwork for transportation improvements.

Transportation needs are vital to future reservation growth and development in the following areas of Federal Treaty Responsibilities: health, safety, education, and economic development.

The Bureau of Indian Affairs Roads Department primarily maintains the Fort Belknap Indian Reservation roads system. Indian Reservation Roads (IRR) are public roads, including roads on the Federal-Aid Highway system, that are located within or provide access to Indian reservations of Indian Trust Land. The BIA has responsibility for administering IRR programs that serve Indian tribes. The Fort Belknap Reservations fair share from the Billings Area Office, Bureau of Indian Affairs for Roads Maintenance in FY-99 is \$314,000.00 to maintain 215 miles of BIA System roads, this includes 100 miles of paved roads, 58 miles of gravel roads, and 57 miles of earth roads. The actual need however is \$500,000.00 to maintain an additional 250 miles of tribal roads that serve our elderly, handicap, and school children.

The Fort Belknap Indian Community Council agrees with the Rapid City Tribal Transportation Town Hall Meeting Participants in that the U.S. DOT needs to provide special road maintenance funding to protect the public investment in the tribal roads system.

An accurate road inventory should be undertaken of all BIA System Roads to support and justify maintenance and construction funding requests.

A brief background in regards to roads and highways would be:

Looking back historically, the "Indian Reservation Road Program" was established on May 26, 1928, by Public Law 520 (codified as 25 USC 318(A)). "The current partnership between the Bureau of Indian Affairs (BIA), and the Federal Highways Administration (FHWA), began in 1930". The Federal-aid-Highway Act of 1936, Public Law 686, Section G had certain important provisions regarding utilization of BIA funds and contained within Section 10(c) of the Federal-aid Highway Act of 1944, Public Law 521 the First BIA/FHWA Memorandum of Agreement which was executed in 1946. 1958 produced new revisions, which resulted in Title 23, USC.

Forty two years ago the "Federal Aid Highway Act of 1956" was signed into law which established the current Interstate Highway System and the Public Policy intent was to establish an infrastructure investment for the future a highly successful public investment program by most standards.

On January 6, 1983 signing of Public Law 85-767, Public Law 97-424, the "Surface Transportation Assistance Act of 1982" (STAA), brought the IRR Program into the Federal Lands Highway Program (FLHP) which provided funding from the Highway Trust Fund. Section 126 of the 1982 STAA required the Secretary of Transportation to allocate Indian Reservation Road (IRR) funds according to the relative needs of the various reservations as jointly identified by the Secretary of Transportation and the Secretary of the Interior.

All this brings us to 1991, Public Law 102-240 when Congress enacted the ISTEA Legislation which increased Tribal Funding from approximately eighty (\$80) million to one hundred ninety one million (\$191). Yet this significant increase only represents thirty (30) percent of the Tribal Infrastructure need. The current IRR System as of 1994 is 25,700 miles of BIA and Tribal owned roads along with 25,600 miles of state, county and local government public roads along with one ferryboat operation (Inchelium-Gifford Ferry).

ISTEA was a landmark in Transportation Legislation with its mandates for inter-agency and inter-governmental cooperation in every state, and the goal of developing a first rate national transportation system.

The implications of ISTEA for the tribes are many, two of which are. First, tribes have an opportunity to utilize what is called two (2%) percent transportation planning dollars to develop usually through their planning departments crucial Transportation Planning for the future. This can include tourism, scenic by-ways, bike paths, or other economic development opportunities.

Second, which is the most important economic development tool for tribes is the Public Law 93-638 Contract(s) for construction contracting by tribes of the IRR Program. Tribes have more input and flexibility in developing their own transportation plans. Through cooperation with the states and municipalities tribes will gain added technical and financial resources, and the right to be involved with transportation planning, construction and employment possibilities at all levels: local, state, BIA, and other Federal Agencies, as equal partners. "ISTEA gave the tribes a place at the table".

At the present time, a number of agencies consultants, tribal governments, local governments, and the BIA provide the "design" of Tribal projects. In 1995, approximately 35 percent of the IRR construction was performed by Indian Tribal Governments under PL 93-638 contracts, 40 percent were done under "Buy Indian Contractors, 15 percent utilizing Indian labor under BIA Force Account.

What this translates to is greatly increasing the employment, training, education, and economic diversification for those tribes who participate. Tribal revenue is increased which accelerates the tribal economy through its enterprise thereby increasing the tribal gross product, tribal small business enhancement, vendors, and other such stimulus occurs adding to an increased tax base along with more taxes for the state.

There is specific Congressional intent in the TEA-21 Bill to provide new opportunities for tribes in transportation improvements, jobs, and ultimately recreational and tourism enhancements that will lead to economic growth.

ISTEA Legislation increased flexibility for states, local governments, and tribes to determine their transportation needs. Section 1025 Statewide Planning, of ISTEA afforded the tribes with the opportunity to be more involved in the planning process with the State, and the MPO's. All the tribes have been more involved in the Transportation Planning process with their perspective county commissioners, BIA, and the MDT as a result of this provision in ISTEA. This has helped the tribes in the coordination of IRR Projects on the reservations, and the selection of projects are based on realistic figures as far as funding is concerned.

Under TEA-21 these planning opportunities continue.

#### **OBLIGATION LIMITATION**

Congress authorizes and appropriates Highway Trust Funds for the Federal Lands Highway Program (FLHP), through the passing of multi-year transportation acts. The last four transportation acts were:

1. The Surface Transportation and Uniform Relocation Assistance Act of 1987.
2. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).
3. The National Highway System Designation Act.
4. The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21).

In most of these acts, Congress authorized funds for the FLHP for 5 or 6 fiscal years. This type of multi-year funding is called "contract authority" (a special type of budget authority), sums authorized in transportation acts are made available for obligation without an appropriations action.

The use of contract authority gives the Federal Land Management Agency (FLMA), Indian Tribal Governments, and States advance notice of the size (funding levels), of the various categories of the FLHP. These categories are, Forest Highways, Indian Reservation Roads, Park Roads, and Parkways, Public Lands Highway Discretionary, and Refuge Roads. As soon as an authorization is enacted it eliminates some of the uncertainty contained in the fiscal year authorization-appropriation sequence.

Historically the FLHP was not effected by the authorization-appropriation sequence since it always was provided the full amount of annual obligation limitation.

Section 1102 of TEA-21 states how the annual obligation limitation would be distributed for FY's 1998-2003. This overrides the special treatment for FLHP funds under the FY-98 DOT Appropriations Act. Under Section 1102,c, (1) of TEA-21, the Secretary is not directed to distribute the amount of obligation limitation needed for the FLHP for allocation by the ratio defined in Section 1102,c, (3).

Basically in Section 11102(f), Congress added a new provision which impacts FLHP funds. It directs the Secretary to (not later than 30 days after the date of the distribution of obligation authority under subsection c, for each fiscal years 1998-2003), distribute to the States any funds (1) that are authorized to be appropriated for such fiscal year for Federal-aid Highway programs (other than the program under section 160 of title 23, USC), and for carrying out subchapter 1 of chapter 311 of Title 49, USC and chapter 4 of title 23 USC and (2) that the Secretary determines will not be allocated to the States (i.e. the FLHP), and will not be available for obligation, in such fiscal year due to the imposition of any obligation limitation for such fiscal year. Such distribution to the states shall be made in the same ratio as the distribution of obligation authority under subsection c, (6).

Any FLHP funds, which do not have obligation limitation, will be returned to the States as Surface Transportation Program Funds, for fiscal year 1998 this amounts to \$52.8 Million.

TEA-21 and the 1991 ISTEA Bill significantly changed how states and tribes do business, and has proven to be an excellent public policy investment, not only for tribes but also for local, state, county, and the federal government. The revitalized planning requirements, the development of management systems, the public input process, broadening the use of transportation funds, and the new players brought to the table by ISTEA have helped preserve the transportation infrastructure. TEA-21 will continue to give the tribes the tools to address the transportation needs prioritized in Indian Country.

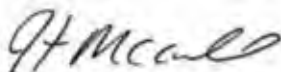
The implementation and enforcement of the TEA-21 provisions and the unique government to government relationships as sovereigns, through Presidential Executive Order #13084 of May 14, 1998 "Consultation and Coordination with Indian Tribal Governments", and provisions included in Executive Memorandum of April 29, 1994, "Government to Government Relations with Tribal Governments", will support the tribal needs to be active participants in the decision-making process that affects our jurisdiction.

The Fort Belknap Indian Community Council strongly recommends that legislation be adopted by the U.S. Congress to exclude the Federal Lands Highway Program from the Obligation Limitation Ceiling in TEA-21, Section 1102 (F). Current policy has resulted in an additional loss of \$120 million through FY-2003. We also recommend that all funds lost due to the obligation limitation be returned to the IRR Program.

The current TEA-21 Bridge Program should be funded separately from IRR Construction Funds and not be a set-aside program. Current funding levels need to be increased and provided to cover, not only bridge replacement and rehabilitation, but also plans, specifications, and estimates.

The Fort Belknap Indian Community Council again would like to thank you for the opportunity to submit our written testimony to the TEA-21 Oversight Hearing.

Respectfully,



Joseph F. McConnell, President  
Fort Belknap Indian Community Council

PATTY MURRAY  
WASHINGTON

# United States Senate

WASHINGTON, DC 20510-4704

COMMITTEE  
APPROPRIATIONS  
BUDGET  
HEALTH, EDUCATION, LABOR  
AND PENSIONS  
VETERANS AFFAIRS

October 28, 1999

Senator Ben Nighthorse Campbell  
Chairman  
Committee on Indian Affairs  
Hart Senate Building, Room 838  
Washington, D.C. 20510-6450

Senator Daniel K. Inouye  
Vice Chairman  
Committee on Indian Affairs  
Hart Senate Building, Room 838  
Washington, D.C. 20510-6450

Dear Senators Campbell and Inouye:

I am writing regarding concerns over the oversight bearing on Indian reservation roads and the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). I appreciate the oversight your committee is providing on this critical issue. The reason I am writing to express my concerns regarding the negotiated rulemaking process. Good-faith implementation of the rulemaking process is critical to improving the conditions of Indian reservation roads in this nation.

Under TEA-21, Congress required the Secretary of the Interior to apply negotiated rulemaking to establish a formula to allocate funding among Indian tribes in fiscal year 2000 and beyond and to issue regulations governing the Indian Reservation Roads Program. I am disturbed to learn that in the 16 months following the promulgation of TEA-21, the Secretary has failed to establish a meaningful negotiation that will deliver a more equitable funding formula that works for more than a few of this nation's Indian tribes. The intent of Congress was not to perpetuate the existing system that benefits relatively few tribes and leaves as many as 350 tribes without any funds to accomplish needed transportation activities.

The intent of the rulemaking process is to establish a new and better formula. The Secretary should not go forward with funding until a more equitable arrangement can be negotiated. After reviewing the makeup of the rulemaking committee, it is clear the current formula favors the larger Indian tribes, most of whom make up the existing rulemaking committee. In order to ensure a meaningful negotiation, no new obligations or awards of funding should be made until the rulemaking committee returns with equitable adjustments beneficial to all

FOR THE SENATE  
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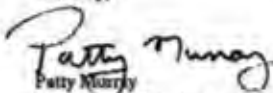


Indian tribes.

One recommendation that should be considered is the model used for nearly all Highway Trust Fund distributions to state transportation programs where a minimum apportionment guarantees a base transportation program. This type of system can be implemented without undue disruption to programs and would ease existing inequities.

Thank you for considering my views during your oversight hearing. If you have any questions or concerns, please contact me or my aide, Dale Learn, at 224-0221.

Sincerely,

  
Patty Murray  
United States Senator

cc: Bruce Rabbitt  
Kevin Gover



October 28, 1999

## CHEROKEE NATION

P.O. Box 948  
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Chad "Cousins" Smith  
OW-03  
Principal Chief

Hastings Shade  
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Deputy Principal Chief

Honorable Ben Knighthorse Campbell  
United States Senate  
Committee on Indian Affairs  
380 Russell Senate Office Bldg.  
Washington D.C. 20510

Dear Senator Campbell:

It has come to my attention that several tribal leaders testified before your committee on October 20, 1999, regarding the Indian Reservation Roads (IRR) program and the Transportation Equity Act for the 21st Century (TEA-21). I applaud this effort and ask that you accept these comments as additional testimony concerning the IRR program under the Bureau of Indian Affairs (BIA) and its relationship to the TEA-21 legislation.

First of all, I am grateful that TEA-21 increased funding for the IRR program, however, spending authority is at levels below the previous Transportation Act (ISTEA) by the time it is allocated to the tribes. This is primarily due to the obligation limitation that was placed on the IRR program by TEA-21. In fiscal years 1998 and 1999, the IRR program lost \$58 million due to this limitation and has seriously impacted the ability of Indian tribes and the Bureau of Indian Affairs to provide improved access to education, health care, and employment. To add to the further detriment of tribes, these funds are reverted to state highway departments, which is not fair and equitable treatment. I fully support legislative relief from this limitation and ask that it be removed from the IRR program completely.

As you are well aware, TEA-21 also requires the Secretary of Interior to establish a tribal-federal negotiated rulemaking committee for purposes of developing a new funding formula and regulations for the IRR program. At this point, it is not known why the BIA waited for seven (7) months to solicit committee membership and (10) months to start negotiations. Congress specifically directed the Secretary to have a new funding formula and regulations in final form no later than April 1, 1999, in order to take effect no later than October 1, 1999. Furthermore, this process was delayed another five (5) months by the Secretary's refusal to sign the negotiation protocols adopted in full by tribal and federal committee members.

With respect to the development of a funding formula that is consistent with TEA-21, I fully support the current formula albeit the process that the BIA uses to arrive at and maintain each

Ben Knighthorse Campbell  
October 28, 1999  
Page 2

tribe's allocation needs to be addressed. Aside from the population factor which constitutes 20% of the formula, the remaining 80% is driven from a road inventory loaded with engineering statistics that cannot be easily verified, leads to manipulation, and if left unattended, the result is a loss of funding for some tribes. The mishandling of this information is the main reason why some tribes have pushed for a change in the current funding formula.

In the area of IRR program operations, an excellent opportunity exists for the committee to develop regulations consistent with TEA-21 and the Indian Self-Determination and Education Assistance Act (Public Law 93-638). However, tribes are witnessing strong resistance to tribal Self-Determination and Self-Governance. Although we do have a good relationship with BIA, the entrenched bureaucracy continues to be a problem.

Public Law 93-638 was designed to provide for an orderly transition and reduction of federal bureaucracy giving tribes meaningful authority to administer federal funding and programs. Even with the enactment of TEA-21, the BIA is increasing its staff as we speak. Numerous attempts have been made by tribes to contract and compact the IRR program only to fail because BIA refuses to identify its residuals and will not allow tribes to administer the full program.

TEA-21 expressly subjects all IRR funding to P.L. 93-638 including the six percent (6%) used for BIA administration without regard to the organizational level the Department of Interior has previously carried out such programs, services, functions, and activities. As evidenced in past and present negotiations, including the TEA-21 Negotiated Rulemaking Committee, BIA is claiming that the 6% is not available to tribes which has resulted in a duplication of services. Moreover, the BIA has found another way to take funding from tribes by withholding project money to ensure public health and safety. This is clearly the tribe's responsibility under P.L. 93-638 and another attempt by BIA to ignore the intent of Congress and prolong tribal rights to self-government.

In closing, I would like to thank you for this opportunity to provide testimony on the IRR program and the TEA-21 legislation. I feel that changes are necessary to insure the IRR program is fully funded at levels envisioned by TEA-21, and that the BIA must be held accountable for their actions.

If you have any questions, please do not hesitate to contact Harley Buzzard of my staff at (918) 456-0671, extension 2321, or Robert Endicott at (918) 587-3470.

Sincerely,



Chadwick Smith, Principal Chief  
Cherokee Nation